

# EXHIBIT J

1  
2 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

3 -----X  
JENNIFER S. FISCHMAN,

4  
PLAINTIFF,

5  
6 -against-

Case No.:  
18-cv-08188

7  
8 MITSUBISHI CHEMICAL HOLDINGS AMERICA, INC.;  
9 MITSUBISHI CHEMICAL HOLDINGS CORPORATION;  
10 NICOLAS OLIVA, in his individual and  
professional capacities; DONNA COSTA, in  
11 her individual and professional capacities;  
and JOHN DOES 1-10, in their individual and  
12 professional capacities,

DEFENDANTS.

13 -----X  
14  
DATE: June 15, 2021

15  
TIME: 10:27 A.M.

16  
17 DEPOSITION of the Plaintiff,  
18 JENNIFER S. FISCHMAN, taken by the  
19 Defendants, pursuant to a Court Order and  
20 to the Federal Rules of Civil Procedure,  
21 held at the offices of Gordon Rees Scully  
22 Mansukhani LLP, One Battery Park Plaza,  
23 28th Floor, New York, New York 10004,  
24 before Enrique Alvarado, a Notary Public of  
25 the State of New York.

A P P E A R A N C E S:

VALLI KANE & VAGNINI

Attorneys for the Plaintiff  
JENNIFER S. FISCHMAN  
600 Old Country Road, Ste. 519  
Garden City, New York 11530  
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and

SARA WYN KANE, ESQ.

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MITSUBISHI CHEMICAL HOLDINGS AMERICA,  
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One Battery Park Plaza, 28th Floor  
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BY: MERCEDES COLWIN, ESQ.  
File #: MCHEM-1135398

SHEARMAN & STERLING

Attorneys for the Defendant  
MITSUBISHI CHEMICAL HOLDINGS CORPORATION  
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ALSO PRESENT:

Sam Jolly, Esq.  
Shearman & Sterling

Brittany L. Primavera, Esq.  
Gordon Rees Scully Mansukhani LLP

Nicholas Oliva  
Donna Costa

Deverell Write,  
Videographer  
Veritext Legal Solutions

\* \* \*

F E D E R A L   S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

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J. FISCHMAN

J E N N I F E R S. F I S C H M A N,  
called as a witness, having been first duly  
sworn by a Notary Public of the State of  
New York, was examined and testified as  
follows:

EXAMINATION BY

MS. COLWIN:

Q. Please state your name for the  
record.

A. Jennifer S. Fischman.

Q. What is your address?

A. 600 Old Country Road, Ste. 519,  
Garden City, New York 11530.

THE VIDEOGRAPHER: We are on  
the record at 10:27 a.m., on June 15,  
2021. This is the beginning of video  
1 recorded deposition of Jennifer S.  
Fischman taken by counsel for the  
defendants in the matter of Jennifer  
S. Fischman versus Mitsubishi  
Chemical Holdings America  
Incorporated et al.

This is part of the US District  
Court for the Southern District of

1 J. FISCHMAN

2 New York. My name is Deverell Write  
3 representing Veritext Legal  
4 Solutions. The court reporter is  
5 Enrique Alvarado from Veritext Legal  
6 Solutions. At this time the court  
7 reporter will swear in the witness.

8 Q. Good morning, Ms. Fischman.

9 A. Good morning.

10 Q. As you know, my name is  
11 Mercedes Colwin and I represent Donna  
12 Costa, Nick Oliva, and Mitsubishi Chemical  
13 Holdings America. I'm here to ask you  
14 questions based on your complaint that you  
15 filed against multiple defendants. We have  
16 already stated for the record who is  
17 present so we don't have to go through that  
18 formality, so thank you Enrique for doing  
19 that.

20 MS. COLWIN: And I just want to  
21 say on the record, counsel have  
22 agreed to the following acronyms so  
23 that we can get through this fairly  
24 quickly. For Mitsubishi Chemical  
25 Holdings America, the acronym will be

1 J. FISCHMAN

2 MCHA. For Mitsubishi Chemical  
3 Holdings Corporation, the acronym  
4 will be for MCHC. For Mitsubishi  
5 Chemical Corporation, the acronym  
6 will be MCC and for Mitsubishi  
7 Chemical Holdings Japan, it will be  
8 MCHJ. Agreed, Counsel?

9 MR. BERMAN: Yes.

10 Q. Ms. Fischman, you've been an  
11 attorney for a long time, so I'm not going  
12 to go through all the formalities of a  
13 deposition. You're familiar with the  
14 deposition rules, correct?

15 A. You can go through the  
16 formalities if you like.

17 Q. Okay. So we're here, as you  
18 know, we have a stenographer, you've been  
19 sworn to tell the truth so you understand  
20 that your testimony has to be truthful,  
21 correct?

22 A. Of course.

23 Q. And you understand that  
24 nonverbal cues can't be captured by a  
25 stenographer so we ask that all your

1 J. FISCHMAN

2 answers to my questions are verbal.

3 Understood?

4 A. 100 percent.

5 Q. And if you need a break, you  
6 can certainly signal that you need a break.  
7 You have your great counsel here, let us  
8 know, but all I ask is that you not  
9 interrupt my questioning; finish the answer  
10 and then you can certainly take a break.

11 Understood?

12 A. Yes.

13 Q. You understand that if you  
14 don't answer truthfully there are criminal  
15 penalties that can attach, correct?

16 A. Yes.

17 Q. Those criminal penalties are  
18 the penalties of perjury, correct?

19 A. Correct.

20 Q. And you understand. Let's have  
21 an agreement. If I ask you a question, you  
22 respond, you've answered truthfully,  
23 correct?

24 A. Yes.

25 Q. You've understood the question

1 J. FISCHMAN

2 I've posed to you, correct?

3 A. Yes.

4 Q. You have answered to the best  
5 of your recollection, correct?

6 A. Sure.

7 Q. Is there any reason why you  
8 can't testify truthfully today?

9 A. No.

10 Q. Have you taken any medication  
11 in the last 24 hours?

12 A. Just Synthroid.

13 Q. Is that for --

14 A. Thyroid.

15 Q. Thyroid condition. What is the  
16 milligram?

17 A. 125 micro milligrams.

18 Q. Any other medication?

19 A. No.

20 Q. Anything over the counter?

21 A. No.

22 Q. Have you consumed alcohol in  
23 the last 24 hours?

24 A. Yes.

25 Q. How much alcohol have you

1

J. FISCHMAN

2

consumed?

3

A. I had a glass of chardonnay

4

last night with dinner.

5

Q. Does consuming the alcohol have

6

any effect on your ability to recall

7

events?

8

A. No.

9

Q. Does it affect your ability to

10

testify truthfully?

11

A. No.

12

Q. Have you taken any controlled

13

substances, or any substance other than

14

what you've already testified, which is

15

Synthroid --

16

A. No.

17

Q. -- milligrams --

18

A. No.

19

Q. And the glass of chardonnay,

20

correct?

21

A. That's correct.

22

Q. And all I ask Ms. Fischman, you

23

might anticipate the question I'm going to

24

ask you but I just ask that you allow me to

25

complete it before you answer. Is that

1 J. FISCHMAN

2 understood?

3 A. Of course.

4 Q. Thank you. When did you first  
5 retain your attorneys, these current  
6 counsel that are present today?

7 A. I don't recall.

8 Q. Do you recall the year?

9 A. I don't remember.

10 Q. Why don't I leave a space so  
11 that can be filled in.

12 A. Yeah, I have no idea.

13 THE WITNESS: Do you?

14 MR. BERMAN: We can't provide  
15 the answer. You have to answer based  
16 upon the best of your knowledge.

17 A. I didn't look at the engagement  
18 agreements. I can't remember. Sometime in  
19 -- let me just -- give me a minute and let  
20 me -- we can provide that.

21 Q. This is your second set of  
22 counsel, correct, you had prior counsel?

23 A. Yes.

24 Q. When did you retain, the name  
25 and the year about that you retained your

1 J. FISCHMAN

2 former counsel?

3 A. I would say -- the name?

4 Q. Yes.

5 A. Richard Reeser (phonetic)  
6 sometime in early 2017. I want to say in  
7 the end of March, April, May. I don't  
8 recall exactly.

9 Q. You retained them though after  
10 you became separated from MCHA, correct?

11 A. Yes.

12 Q. Was this the first time that  
13 you've been a party to an action?

14 A. Yes.

15 Q. Did you ever bring any sort of  
16 charge in an enforcement agency?

17 A. Never.

18 Q. Have you ever been sued?

19 A. No.

20 (Whereupon, First Amended  
21 Complaint was marked as Defendant's  
22 Exhibit for identification as of this  
23 date.)

24 Q. Now you filed a complaint. I'm  
25 just going to have that just marked, the

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J. FISCHMAN

first exhibit. It's the first amended complaint, the one that's controlling here. I'm not going to put in the former, the initial complaint. Ms. Fischman, so I'm showing you the first amended complaint that your counsel submitted on your behalf.

A. Yes.

Q. And you reviewed this complaint prior to its admission in court and filing, correct?

A. Yes.

Q. You understood that it was critically important to ensure that everything that was put in there in terms of factual requirements were accurate, correct?

A. Yes.

Q. And everything that you put in this complaint is accurate?

A. To the best of my knowledge.

Q. Did you have input in the drafting of this complaint, did you actually write portions of the complaint?

A. I don't recall.

1 J. FISCHMAN

2 Q. Is there anything that exists  
3 that would refresh your recollection as to  
4 whether or not you drafted portions of this  
5 complaint?

6 A. I'm sure I looked at the  
7 complaint and I probably gave comments on  
8 it.

9 Q. But you don't have a specific  
10 recollection that there is a document that  
11 may refresh your recollection as to whether  
12 or not you wrote portions of the complaint,  
13 correct?

14 A. I don't.

15 Q. Now you were hired by MCHA in  
16 March of 2008, correct?

17 A. I was hired by Mitsubishi  
18 Chemical USA to be more specific. That is  
19 the former company.

20 Q. And the successor to the  
21 company that you've identified is MCHA,  
22 correct?

23 A. Yes.

24 Q. And MCHA is the payor on every  
25 check that you received during the time

1 J. FISCHMAN

2 that you worked at MCHA, correct?

3 A. Yes.

4 Q. And the position that you held  
5 at MCHA, for purposes we know that there  
6 was a successor company.

7 MS. COLWIN: Let's just all  
8 agree that it was MCHA, that was the  
9 successor company, is that in  
10 agreement Counsel so there is no  
11 confusion on the record?

12 MR. BERMAN: When you're  
13 referring to the successor company  
14 you're referring to MCHA.

15 MS. COLWIN: Yes.

16 MR. BERMAN: That's fine.

17 MS. COLWIN: And that is, it's  
18 already on the record, let's  
19 stipulate that is Ms. Fischman's  
20 employer. So stipulated?

21 MR. BERMAN: We're not  
22 stipulating to any legal conclusions.  
23 We can stipulate that you're using  
24 that term for MCHA.

25 MS. COLWIN: Let's continue.

1 J. FISCHMAN

2 Q. And your position, your initial  
3 position with MCHA, was corporate counsel,  
4 correct?

5 A. Correct.

6 Q. And at some point later on you  
7 were promoted; is that right?

8 A. Yes.

9 Q. And you reported, at the time  
10 of your promotion to assistant general  
11 counsel, you reported to Donna Costa; is  
12 that right?

13 A. Correct.

14 Q. And Donna Costa was the general  
15 counsel and chief compliance officer at the  
16 time; is that right?

17 A. Correct.

18 Q. Please take a moment to take a  
19 look at the document that is Bates stamped  
20 41 to 57. Now at this time Ms. Costa began  
21 a practice of having these mid-year  
22 reviews; isn't that right?

23 A. I'm sorry. What are you asking  
24 me and what am I suppose to be looking at?

25 Q. You're looking at an evaluation

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J. FISCHMAN

for year end for '14. These are the mid-year evaluations that the legal department, subject to Ms. Costa, had begun for mid-year review, correct?

MR. BERMAN: Objection to form.

MS. COLWIN: Let me rephrase.

Q. Ms. Fischman, I'm showing you a document. Let's start with do you recognize the document that's before you? It's Bates stamped 41 to 57.

A. Yes. This is an e-mail that I sent to Donna with a draft of my year-end evaluation when I was promoted to acting general counsel, as far as I can tell.

Q. I'm going to direct your focus to Bates stamp 42. Do you see that on the bottom. So it's 000042. And the title that you had at the time was assistant general counsel, correct?

A. Yes.

Q. So this would have captured your time as assistant general counsel; is that right?

A. Yes. It's a backward-looking

1 J. FISCHMAN

2 document and a forward-looking document.

3 Q. Okay. So this is, as you can  
4 see, beginning in page 44 there's the blue  
5 line throughout this document, correct?

6 A. Mmhmm.

7 Q. Is that a yes?

8 A. Yes.

9 Q. And that's Ms. Costa, her input  
10 on all of this, correct?

11 A. Yes.

12 Q. So just so we understand fully  
13 the process of the evaluation process, at  
14 the time you were at MCHA, the process  
15 begin with you drafting your initial  
16 review.

17 A. Yes.

18 Q. Sending it to Ms. Costa, Ms.  
19 Costa then reviewing it and then giving her  
20 input; is that right?

21 A. Yes, that was the process.

22 Q. And looking at this document,  
23 just so the record is clear, all of the  
24 black ink that's on this document would be  
25 your original comments; is that right?

1 J. FISCHMAN

2 A. Actually not necessarily,  
3 because what we did was from year to year  
4 we would just kind of use the same document  
5 and we would kind of just update it, so  
6 there might be language in here and writing  
7 in here that had accrued since an earlier  
8 year. So it might have been Donna's  
9 language in some of it as well.

10 Q. Was there anything in this  
11 document that you believe is inaccurate?  
12 We can go off the record for a few minutes  
13 and you can let us know, identify, any part  
14 of this document that you believe to be  
15 inaccurate.

16 THE VIDEOGRAPHER: The time on  
17 the video monitor is 10:42 a.m. We  
18 are off the record.

19 (Whereupon, an off-the-record  
20 discussion was held.)

21 THE VIDEOGRAPHER: We are back  
22 on the record. The time on the video  
23 monitor is 10:46 a.m.

24 MS. COLWIN: Do you want to  
25 read back, Enrique, the last two

1 J. FISCHMAN

2 questions and answers.

3 (Whereupon, the referred to  
4 questions and answers were read back  
5 by the Reporter.)

6 MS. COLWIN: That's the pending  
7 question.

8 THE WITNESS: No, there's  
9 nothing inaccurate.

10 Q. I'm going to direct your  
11 attention to 47, to Bates stamp 47 at the  
12 end. The blue part that's on this  
13 document, that's your statement at the very  
14 end, correct? Where it says "I'm excited  
15 for my new role, leading the legal  
16 department, assuming the lead of the  
17 compliance program this year. These are  
18 huge, huge responsibilities. I'm ready to  
19 take them on and devote all my energy to  
20 them," exclamation point.

21 A. Yes.

22 Q. That was your statement?

23 A. A-ha.

24 Q. I had asked earlier, Ms.  
25 Fischman, and I don't believe I got an

1 J. FISCHMAN

2 affirmative on this, there are mid-year  
3 reviews that the legal department went  
4 through in 2014. Do you recall that?

5 A. I don't recall there being a  
6 standard practice for mid-year reviews.

7 Q. I'm going to show you a  
8 document that's Bates stamp 1359 to 1373.  
9 Do you recognize this document?

10 A. I'm sorry, can you be more  
11 specific, please?

12 Q. Do you recognize the document  
13 I've handed to you. It's the e-mail  
14 exchanges between yourself and Ms. Costa in  
15 the beginning pages and then I focus your  
16 attention on Bates stamp 1362.

17 A. Yes.

18 Q. And this would be your mid-year  
19 review, correct?

20 A. Yes.

21 Q. And that was dated November 20,  
22 2014?

23 A. Yes.

24 Q. If you can take a look at this  
25 document and let us know if there are any

1 J. FISCHMAN

2 inaccuracies.

3 A. No.

4 Q. So the answer is there are no  
5 inaccuracies, correct?

6 A. There are no inaccuracies.

7 (Whereupon, Copy of mid-year  
8 review was marked as Defendant's  
9 Exhibit 61 to 76 for identification  
10 as of this date.)

11 Q. I ask that Exhibit 61 to 76.  
12 Ms. Fischman, I'm showing you what's been  
13 marked as 61 to 76. This is your executed  
14 copy of your mid-year review, correct?

15 A. No.

16 Q. What is it?

17 A. This is my year-end review for  
18 2014.

19 MR. BERMAN: Counsel, please  
20 note that the Bates numbers are  
21 identical. Excuse me, never mind,  
22 it's 1361. Never mind.

23 Q. Take a look at your signature  
24 at 68. That is your signature, correct?

25 A. Yes.

1 J. FISCHMAN

2 Q. What portion of this document  
3 did you provide, did you write?

4 A. Everything with the exception  
5 of -- honestly I can't recall every single  
6 letter that I wrote, but it would be  
7 whatever changes that you see between  
8 Defendant's 42 and Defendant's 64, you can  
9 run a red line and see what the changes are  
10 that a supervisor would make.

11 Q. There are no inaccuracies in  
12 this year-end evaluation, correct, that one  
13 that's Bates stamped 64 to 76, correct?

14 A. Not that I know of after -- not  
15 that I know, no.

16 Q. And you have no reason to  
17 believe that there are any inaccuracies in  
18 this document, correct?

19 A. I have no reason to believe  
20 that there inaccuracies. Can you give me  
21 an idea of what you mean inaccuracies?

22 Q. There's nothing in here that  
23 you disagree with, correct?

24 A. That I disagree with? I'm not  
25 sure what you mean by disagree.

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J. FISCHMAN

Q. Is there anything in this document that is not accurate with respect to your performance, as detailed by Ms. Costa, who is the individual who was the reviewer?

A. Do I disagree with any of the comments about my performance, is that --

Q. Well, let's approach it this way. You signed the document, did you not? That's on 69.

A. I did.

Q. You would not sign a document that you didn't number one, understand and agree with, correct?

A. First of all, I'm not going to agree to your comment that I would not sign a document that I disagreed with or have a problem with. I think that we signed lots of documents that we disagreed with, but I will tell you that I do not see inaccuracies in this April 1, 2015, sorry April 29, 2015 performance year-end review.

Q. And your reviewer was Ms. Costa, correct?

1 J. FISCHMAN

2 A. Yes.

3 Q. And Ms. Costa is the one who  
4 provided the commentary throughout  
5 regarding your performance; isn't that  
6 right?

7 A. She and I wrote it together as  
8 is evident from the other documents that  
9 you've shown me this morning that show that  
10 I wrote the document.

11 Q. If you had any disputes, and  
12 this is true of all your evaluations at  
13 MCHA, correct, if you had any disputes with  
14 anything that was presented to you in your  
15 evaluation, whether it was mid-year or end  
16 of year, you had the opportunity to  
17 actually write in your comments within the  
18 evaluation itself?

19 A. No, actually, no, that's not  
20 true.

21 Q. What is --

22 A. That wasn't the process. So  
23 the process, if you don't mind me  
24 explaining it, so the process was that  
25 somewhere around the beginning of the year,

1 J. FISCHMAN

2 and the fiscal year for the Japanese  
3 companies ends March 31st, so we were on a  
4 fiscal year April 1 to March 31, so  
5 somewhere around February or early January,  
6 that timeframe, we would be instructed to  
7 begin the process of filling out our  
8 evaluation.

9 So we would do a draft, as you  
10 see, of our own evaluation and we would  
11 write the entire thing from head to toe.  
12 We would fill in performance during  
13 previous period, major areas of  
14 responsibility, and then we fill in our  
15 performance, then on the next page we would  
16 go over our knowledge and skills and we  
17 would fill in, and frequently even I would  
18 fill in my level of proficiency.

19 And then I would write the  
20 comments. Jennifer worked on a number of  
21 ongoing projects, she took over the  
22 management of HIV HCD litigations. Those  
23 are comments that I would write, all of  
24 them, and I would go through every --

25 Basically my process was that I

J. FISCHMAN

would go back and I would look at all the major, all the major projects that I worked during the course of the year for all of the affiliated companies. And so the major ones that I worked on I would identify and I would say this is the project that I worked on, this was the conclusion. We successfully concluded this litigation, or I successfully concluded employment investigations; I successfully concluded MNA deals.

So I would go through and I would write this all out and then, you know, some of it, you know, over the years we would leave some sentences in from the year before. So, for example, the third paragraph begins Jennifer has demonstrated an ability to handle many complex matters at once. So I think that sentence may be found in earlier performance reviews.

So if you go back to 2009, 2010, 2011, you may find that exact same sentence because like I said, we started from the year earlier, you know, the year

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J. FISCHMAN

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before, and I would just update it with the

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substantive work and then Donna would go in

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and she would red line it or just take out

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whatever fluff, whatever she wanted to, and

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then she would add her own comments here

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and there so that was the process --

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Q. But I want to make sure the

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record is clear, Ms. Fischman, is that you

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had an avenue, if you did not agree with

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what was said in this evaluation, to speak

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up and to say something, whether it's a

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collaboration with Ms. Costa or actually

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writing something differently within the

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review?

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A. So in every year, I wrote the

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document.

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Q. Right, we understand that.

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A. And in every year the comments

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were all positive, so I had no reason to

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object to anything that Ms. Costa put in.

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If there was room for growth and she wrote

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there was room for growth, I'm good with

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that. We're all here to grow and to learn

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from what we do, okay, so I did not have

1 J. FISCHMAN

2 any reason to object to any of my annual  
3 reviews.

4 Q. So when you say you had no  
5 reason to object to your annual reviews,  
6 that's up to and including this one dated  
7 April 29, 2015, correct?

8 A. Up to this one, 2015.

9 Q. Is that right? We spoke over  
10 each other and I just want to make sure  
11 that we are accurate. You had no reason to  
12 dispute anything that's written in any of  
13 your evaluations up to and including this  
14 last one, April 29, 2015?

15 A. This is true up to and  
16 including this last one.

17 Q. And there's no evidence of  
18 discrimination in this performance  
19 evaluation, correct?

20 MR. BERMAN: Object to form.  
21 Calls for legal conclusion.

22 Q. Did you feel targeted in any  
23 way and treated unfairly in this  
24 evaluation?

25 A. So in this evaluation, I did

1 J. FISCHMAN

2 not feel discriminated in the language of  
3 this evaluation. What I did feel  
4 discriminated against was that I was not  
5 promoted to the full general counsel as I  
6 should have been back in December of 2014  
7 when I was made acting general counsel,  
8 which no one in the company had ever been  
9 acting anything, but at that time, I was  
10 made acting, so yes, I did object to that  
11 and I made that objection well known.

12 Q. So I think this is a great way  
13 to segue into that area but before we do,  
14 it's your testimony then that up until  
15 December of 2014, you had not been  
16 subjected to anything that you perceived to  
17 be unfair or inappropriate, correct?

18 MR. BERMAN: Object to form.

19 Mischaracterizes testimony.

20 A. I disagree with your  
21 characterization.

22 Q. Is it your testimony that there  
23 were acts of discrimination that took place  
24 prior to December 2014?

25 A. I'm not going to discuss

1 J. FISCHMAN

2 anything outside --

3 THE WITNESS: Do I have to  
4 answer --

5 MR. BERMAN: You can answer the  
6 question.

7 MS. COLWIN: Do not coach.

8 MR. BERMAN: I said to answer  
9 the question.

10 MS. COLWIN: We're going to  
11 keep this in conformance with what's  
12 required under the Federal Rules of  
13 Civil --

14 A. Okay, I will go back into  
15 earlier years. There were definitely times  
16 where as a woman, in a company full of only  
17 men, with only one other woman, at the  
18 head, in the leadership, I definitely felt  
19 discriminated against. I definitely felt  
20 that I was among this misogynistic culture;  
21 that I was always the only woman in the  
22 room in office meetings and business  
23 meetings. I definitely felt that there  
24 were times when, for example, when we were  
25 in Japan, and I saw other women being

1 J. FISCHMAN

2 dressed down, yes, I definitely felt that  
3 there were other times that I observed or  
4 felt discriminated against in the company.

5 Q. So Ms. Fischman, I just want to  
6 make sure that the record is clear. You've  
7 already stated on the record that MCHA was  
8 your employer, correct?

9 MR. BERMAN: Object to form.

10 A. I received a paycheck from  
11 MCHA, yes.

12 Q. And you directly reported to  
13 the Donna Costa, correct?

14 A. Yes.

15 Q. And the individuals in that  
16 legal department, under Donna Costa, for  
17 the most part, 50 percent or greater, were  
18 women, were they not?

19 A. Well, why don't you identify  
20 who the people in the legal department are  
21 and I'll tell you if I believe they're  
22 women. I'm not sure who --

23 Q. Let's go through it. Katherine  
24 Roach you worked with, correct?

25 A. Katherine Roach is an assistant

1 J. FISCHMAN

2 general counsel who worked for the most  
3 part, the entire time that I worked at  
4 Mitsubishi, part-time and from home.

5 Q. She's still an assistant  
6 general counsel, correct?

7 A. Yes.

8 Q. She still was the primary  
9 intellectual property counsel, correct, in  
10 the department?

11 A. She is and she is a very  
12 bright, terrific person.

13 Q. The legal department is  
14 comprised, in 2008, of the following  
15 individuals, Ms. Costa as the general  
16 counsel, correct?

17 A. Yes.

18 Q. Katherine Roach as the  
19 assistant general counsel, correct?

20 A. I don't know that her title in  
21 2008 was assistant general counsel.

22 Q. She was there at the time --

23 A. She was home working from 9 to  
24 12 was my recollection at that time. 9 to  
25 1, working part-time.

1 J. FISCHMAN

2 Q. So there will be testimony, and  
3 I'm sure you'll be present for it, that she  
4 worked three days a week, those three full  
5 days a week, and the testimony will come  
6 from senior management within the legal  
7 department. They would be lying?

8 A. I'm was not in charge of  
9 Katherine Roach's schedule. My  
10 recollection from 2008, until at least 2011  
11 or 2012, was that she worked a limited  
12 hourly schedule from her home. She came  
13 into the office, I think, once a month for  
14 our legal department meeting.

15 Q. But when you stated on the  
16 record that her hours were 9 to 12, that is  
17 not accurate, correct?

18 A. My recollection was that there  
19 were hours of the day that she worked but  
20 it was not a full workday. Like I said,  
21 I'm not her supervisor, but I do recall  
22 that there were times when businesses tried  
23 to to reach her and she was offline.

24 Q. Ms. Fischman, you would agree  
25 with me that individuals that are

1 J. FISCHMAN

2 management in the legal department would  
3 know what her hours were, correct, since  
4 they were the ones responsible for her, for  
5 Ms. Roach, isn't that right?

6 A. I mean you can pull some  
7 documentation that can contradict that. I  
8 don't think we're here to discuss  
9 Katherine's schedule, but she was a  
10 part-time employee.

11 Q. So let me finish the legal  
12 department. When you started in 2008,  
13 Kelli Troccoli was there as the legal  
14 assistant, correct?

15 A. Yes.

16 Q. Nathan Gallup as corporate  
17 counsel?

18 A. Yes.

19 Q. And Kanako Murata (phonetic),  
20 who was a female Mitsubishi Chemical  
21 trainee from Japan; is that right?

22 A. I don't recall the years that  
23 Kanako worked in our department and I don't  
24 think she worked in the White Plains  
25 office. I thought we had somebody else

1 J. FISCHMAN

2 there at that time. Daisuke Kansawa. Was  
3 it Daisuke? Not Daisuke. It was another  
4 legal trainee. You'll have to refresh my  
5 memory as to Kanako's years. I don't know.  
6 I don't recall her in the White Plains  
7 office though.

8 Q. You received two promotions  
9 working at MCHA, correct?

10 A. Yes.

11 Q. Those two promotions came from  
12 Donna Costa, isn't that right?

13 A. Donna Costa, yes.

14 Q. So she promoted you from  
15 corporate counsel to assistant general  
16 counsel, correct?

17 A. Yes.

18 Q. And then she promoted you from  
19 assistant general counsel to acting general  
20 counsel; is that right?

21 A. She delivered the information  
22 to me that I would be promoted.

23 Q. Is it your testimony that she  
24 didn't have input in your promotion to  
25 acting general counsel?

1 J. FISCHMAN

2 A. It's my belief that she had  
3 input but not final authority, and it's  
4 also my belief that even her authority was  
5 subject to Japan's approval as all material  
6 decisions that were made at MCHA were  
7 subject to authorization from Japan.

8 Q. When you keep referring to  
9 Japan, what are you referring to? Japan is  
10 a country, what are you referring to?

11 A. Management in Japan.  
12 Management at MCHC; management at MCC;  
13 management at -- well, MCHJ is just the  
14 legal arm of MCHC.

15 Q. So let me break this down. At  
16 MCHC, who do you believe had input in your  
17 promotions?

18 A. Ken Fujiwara, Yoshisato-san,  
19 Sakaguchi, Takimoto, Date-san. The  
20 officer, sorry, the board members of MCHA,  
21 who were unknown to me but were Japanese --  
22 sorry, were MCHC employees.

23 Q. At MCC, who do you believe had  
24 input in your promotions?

25 A. Takimoto. I can't remember

1 J. FISCHMAN

2 people's names.

3 Q. MCHJ?

4 A. I've given you names of people.

5 Q. At MCHJ, the same ones from  
6 MCHC?

7 A. Well, Sakaguchi is MCHJ,  
8 Manomi-san is MCHJ. I mean there may be  
9 others.

10 Q. But those are the ones you  
11 recall as you sit here today?

12 A. Mhmm.

13 Q. Is that a yes?

14 A. Yes.

15 Q. Is there a document that you  
16 have in your possession and control that  
17 you believe may refresh your recollection?

18 A. No.

19 Q. When I asked you to identify  
20 acts of discrimination that you felt, you  
21 identified meetings outside of MCHA, so I  
22 want to focus your attention at MCHA.  
23 There were no acts of discrimination that  
24 you were subjected to by MCHA, according to  
25 your testimony, prior to December of 2014.

1 J. FISCHMAN

2 Do you agree?

3 A. I think that there were times  
4 of feeling slighted, there were times where  
5 I did not feel comfortable with Yoshisato.  
6 That I felt that he looked down upon me as  
7 a woman. There were certainly  
8 uncomfortable conversations with him, but  
9 for the most part, most of my interactions  
10 were not with MCHA.

11 For example, in our legal  
12 department we support a variety of  
13 businesses, so my interactions were with  
14 business people at all the other businesses  
15 that I supported.

16 Q. At MCHA, and I'm talking about  
17 your colleagues, and your supervisor, Donna  
18 Costa, at MCHA, you were never subjected,  
19 prior to December of 2014 --

20 A. Actually --

21 Q. I want to make sure that this  
22 record is clear. Prior to December of  
23 2014, you had no allegations of  
24 discrimination against any of your  
25 colleagues prior to December of 2014,

1 J. FISCHMAN

2 correct?

3 A. No, actually that's not the  
4 case. There was an instance where I felt  
5 discriminated against and humiliated by  
6 Donna Costa. There were a number of  
7 occasions actually where in front of other  
8 people, she --

9 When I was preparing to leave  
10 for Japan, she said you're going to Japan,  
11 you need to leave your personality at home  
12 as if my personality, which of course,  
13 being a woman, my personality is tied up in  
14 my emotions, the way I hold myself, the way  
15 I dress, the way I look, and the way that I  
16 interact with people, and that felt very  
17 discriminatory at the time.

18 I don't think she would ever  
19 have said that to a man; in fact, I'm  
20 certain of it. There were times where she  
21 addressed me or dressed me down after a  
22 meeting with Japanese businessmen for  
23 making small talk prior to the meeting to  
24 put everyone at ease. She told me that  
25 they don't want to hear from you, which

1 J. FISCHMAN

2 again, felt very discriminatory.

3 I can't imagine her saying such  
4 a thing to a man who mentioned did you  
5 happen to see that we have Starbucks in the  
6 building? This is not a controversial  
7 comment and I felt I should be seen, not  
8 heard, and I felt that those were  
9 discriminatory comments.

10 Q. Let me make sure that the  
11 record is clear what you believe Ms. Costa  
12 subjected you to. You believe that when  
13 she made comments to you about leaving your  
14 personality when you are off to a trip to  
15 Japan, leave your personality here in the  
16 US, you believe that was gender, correct?

17 A. Yes.

18 Q. What evidence is there that  
19 that's gender? Is that just your  
20 assumption?

21 A. The evidence that I feel that  
22 that's gender is that I am woman and all of  
23 management in Japan are men, a hundred  
24 percent.

25 Q. Ms. Fischman, we're not talking

1 J. FISCHMAN

2 about Japan and when you say Japan we've  
3 already establish it's not the country. I  
4 need to know what entity that you're  
5 targeting when you say that. I'm talking  
6 about Ms. Costa and I want to keep it to  
7 Ms. Costa so my question again is --

8 MS. COLWIN: Enrique, can you  
9 please ask that question again so  
10 that we can get the response.

11 (Whereupon, the referred to  
12 question was read back by the  
13 Reporter.)

14 A. Yes, I felt that that was  
15 gender based and that was my interpretation  
16 of her smart way of saying it without me,  
17 without actually discriminating, so let me  
18 finish my statement. Ms. Costa is an  
19 incredibly intelligent lawyer person and  
20 when she says things, she is very careful  
21 to not appear discriminatory.

22 However, that was not a casual  
23 comment. It was very clear to me that I  
24 had to be more manly there, not to be as  
25 personable, and as friendly, and as womanly

1 J. FISCHMAN

2 as I am, and that I should be seen, not  
3 heard, and that the men at MCC and MCHC,  
4 who I would be visiting, would be not  
5 appreciate a vocal woman, a vocal New York  
6 woman, and that was my perception and my  
7 belief.

8 Q. So it is your perception, Ms.  
9 Fischman, but I want to make sure the  
10 record is clear. Ms. Costa never stopped  
11 you from being promoted, correct?

12 A. Yes, she did. In  
13 December 2014, she stopped me from being  
14 promoted to the general counsel.

15 Q. You didn't let me finish. Ms.  
16 Costa did not stop you from being promoted  
17 to assistant general counsel, correct?

18 A. No.

19 Q. And Ms. Costa had reservations  
20 about you assuming the role of general  
21 counsel, did she not?

22 A. I can't speak to that.

23 Q. You seen a lot of documentation  
24 in this litigation. It's been a long  
25 litigation process. You've seen

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J. FISCHMAN

documentation where Ms. Costa has raised concerns because she felt you were about two or three years away from being able to take on the role of general counsel; isn't that right?

A. I can't speak to what Ms. Costa thought.

Q. She expressed that to you, did she not?

A. No.

Q. She never said to you that you were about two or three years away from assuming the role of general counsel?

A. She may have said that during her meeting, though I had been practicing law for 17 years and I had been working -- let me finish -- I had been working at the company at that time for seven years.

Q. Ms. Fischman, Donna Costa had that role of general counsel and chief compliance officer, correct?

A. Yes.

Q. And she had it for a number for years, so she knew full well what was

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J. FISCHMAN

needed to have that role, do it and execute it successfully, correct?

A. Yes.

Q. When she had reservations about you assuming that role, she didn't say she wouldn't give you the opportunity. What she said was you were two or three years away. Correct?

A. I don't recall that.

Q. And she would help you and if everything worked out, you would get that position?

A. No, she specifically said that she was not going to do that. She was going to help me from December through April 1st, we would have multiple meetings where she would do a data dump and she specifically said to me, in that meeting, I can't make any promises to you and it's probably not going to happen. Those were actually the words that she used and I said to her I'm going to get this, I'm going to prove it, I can do this.

Q. So we're going to go through

1 J. FISCHMAN

2 the particulars of that conversation  
3 because that's obviously very critical and  
4 important. I want to finish up on some of  
5 items that you've raised. You had said  
6 that Ms. Costa would not make those  
7 comments to men, meaning the comments to  
8 leave your personality at home here in the  
9 US, correct, that was your testimony?

10 A. Yes, that was my testimony.

11 Q. You have not been in the  
12 presence of every single conversation that  
13 Ms. Costa had with men, correct?

14 A. I've been in the presence of  
15 her --

16 Q. You're not answering my  
17 question, Ms. Fischman. My question is  
18 you have not been in the presence of every  
19 conversation she's had with men?

20 A. Certainly not.

21 Q. So we're in agreement with  
22 that. So there is a possibility and, in  
23 fact, it probably it is, that she did coach  
24 men on how to comport themselves in Japan,  
25 correct?

1 J. FISCHMAN

2 MR. BERMAN: Object to form.

3 A. I have no idea whether she has  
4 or has not.

5 Q. So when you stated that she  
6 wouldn't speak to a man in that way, that's  
7 not accurate, is it?

8 A. In my experience, I had never  
9 witnessed her speaking to her another man,  
10 or anyone else in our department, in that  
11 way.

12 MS. COLWIN: Move to strike.  
13 Can you ask the question again  
14 please. I'd like an answer to that.

15 (Whereupon, the referred to  
16 question was read back by the  
17 Reporter.)

18 A. In my experience, I have never  
19 witnessed her saying such things to a man  
20 in our legal department.

21 MS. COLWIN: I'm going to move  
22 to strike again.

23 Q. You were not present for every  
24 conversation that Ms. Costa had with men at  
25 MRHA, correct?

1 J. FISCHMAN

2 A. That is correct.

3 Q. So when you made the statement  
4 under oath that she would wouldn't speak to  
5 a man that way, that is not accurate is it?

6 MR. BERMAN: Object to form.

7 A. In my experience, I had never  
8 witnessed her speaking to another man or  
9 coach, or did I ever hear that she had  
10 coached another man in that way.

11 MS. COLWIN: I'm just going to  
12 move to strike. I'll just move to  
13 compel the answer.

14 Q. Isn't the coaching that you  
15 received from Ms. Costa is to be more  
16 respectful and to listen more?

17 A. I can't recall that I ever  
18 heard her say be more respectful; listen  
19 more, for sure.

20 Q. When Ms. Costa takes the stand  
21 and testifies that she coached you and said  
22 be more respectful and listen more, is it  
23 your testimony that she is lying?

24 MR. BERMAN: Object to form.

25 A. I think I just answered that.

1 J. FISCHMAN

2 She certainly told me to listen more;  
3 listening is very important --

4 Q. The second part of my question  
5 was be more respectful. Do you recall  
6 being told that?

7 A. I don't recall be more  
8 respectful. I'm a pretty respectful person  
9 so I don't recall that.

10 Q. Is there anything in your  
11 possession and control that would refresh  
12 your recollection as to whether you were  
13 instructed to be more respectful?

14 A. Not that I know of but maybe if  
15 you have a document you can show me  
16 something.

17 Q. As we go through I'm sure there  
18 will be more for us to discuss on that  
19 matter. You have said on the record that  
20 you believe the MCHC, MCC and MCHJ had  
21 exhibited misogynistic tendencies, correct?

22 A. Correct.

23 Q. Now you do know that when  
24 Mr. Yoshisato was elevated within the  
25 company, he recommended Ms. Costa as his

1 J. FISCHMAN

2 successor, correct?

3 A. No, I don't know anything about  
4 that.

5 Q. You have no reason to dispute  
6 that, correct?

7 A. I have no knowledge of it.

8 Q. And you're aware from the  
9 documents that have been produced here now  
10 that it was Mr. Yoshisato who recommended  
11 that you be elevated to general counsel and  
12 then elevated to acting general counsel,  
13 correct?

14 A. Actually, no, I don't have that  
15 document.

16 Q. Bates stamp 1104 to 1106. Do  
17 you see the document? I'm directing you to  
18 1106. It is an e-mail communication  
19 between Ms. Costa and Mr. Fujiwara dated  
20 December 10, 2014. In the middle of  
21 document it says "I received a message from  
22 Yoshisato-san that MCHA wants us to make  
23 Jennifer acting general counsel for  
24 12 months and I hope that she will grow  
25 into the job. I'm working on a plan to

1 J. FISCHMAN

2 communicate to her, which I will discuss  
3 with Yoshisato-san and later present to  
4 Jennifer."

5 A. Sorry, what's your question?

6 Q. You have no reason, now that  
7 you see this document before you, you have  
8 no reason to dispute the question I asked  
9 before, that it was Mr. Yoshisato who had  
10 recommended you for the acting general  
11 counsel position?

12 A. Well, actually what I see is an  
13 e-mail between Donna and Ken Fujiwara. I  
14 don't see any message from Yoshisato-san,  
15 so I actually couldn't say what he said to  
16 her and so I actually think that there were  
17 -- that there may have been outside  
18 discussions where they made this decision  
19 and then Donna interpreted or spun it to  
20 make it seem like it's Yoshisato wanted  
21 this or didn't want this. I actually don't  
22 trust this e-mail.

23 Q. What's the basis for you're not  
24 trusting the e-mail and believing it's  
25 inaccurate?

1 J. FISCHMAN

2 A. Because later, throughout the  
3 year, after all of this, I've seen other  
4 documents that are complete fabrications  
5 between Donna and Ken of things I have  
6 actual knowledge about and so when I look  
7 at this and I see something that a message  
8 received from Yoshisato, I would rather see  
9 the message from Yoshisato than rely on  
10 Donna's interpretation of that message or  
11 communication about that message.

12 Q. So your testimony is that  
13 there's some documents, somewhere that's  
14 been produced, that would establish that  
15 this document in front of you, 1106, is  
16 inaccurate. Is that what you're saying?

17 MR. BERMAN: Object to form.

18 A. I don't think that's what I was  
19 saying. What I'm saying is that --

20 Q. Let me rephrase that. What  
21 evidence, not supposition, not opinion,  
22 what evidence do you have to establish that  
23 this document in front you, 1106, is  
24 inaccurate?

25 A. The evidence that I have, and

1 J. FISCHMAN

2 that I base my opinion on, is that there  
3 were a number of e-mails that Ms. Costa  
4 wrote to Ken Fujiwara, throughout the year  
5 of 2015, where she created fabrications  
6 about me to him that are completely  
7 inaccurate and because of that, I don't  
8 believe that what Yoshisato says here, or  
9 what she says Yoshisato says here, is a  
10 complete picture of what occurred. So I'd  
11 rather rely on Yoshisato's actual message  
12 than Donna's explanation of a message.

13 Q. We're going to go through a  
14 number of documents, Ms. Fischman. Now  
15 that you've placed this context on the  
16 record, I will continue to ask you the same  
17 question. Are there inaccuracies in this  
18 document, and when we get through if we  
19 arrive at the document that you believe  
20 disputes 1106, I'm going to ask you to flag  
21 it for us so that we can go back to that  
22 discussion. Understood?

23 A. Sure. I'm not sure that we're  
24 going to find -- since you haven't produced  
25 any e-mails or documents from Yoshisato

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J. FISCHMAN

that I've seen, or that I recall seeing, I don't think we're going to find a direct contradiction to this statement. What I'm merely saying is that I don't trust these e-mails where there's no underlying message that's being repeated.

Q. So let me make sure that I understand and the record is clear. You believe that Donna Costa is a liar, is that what you're saying?

A. Yes.

Q. And when she testifies under oath, she will do it under the penalties of perjury, she would be lying?

MR. BERMAN: Object to form.

A. Yes.

Q. From the time, from 2008 to 2014, you've already established on the record that you reported to Ms. Costa at MCHA, correct?

A. Yes.

Q. You didn't report to anyone at MCHC, correct?

A. No. Well, yes. Yoshisato-san

1 J. FISCHMAN

2 and before him, I don't even remember who  
3 the president was, but the presidents of  
4 the company were always Japanese employees  
5 of MCHC.

6 Q. But Mr. Yoshisato was at MCHA,  
7 at the time; he was the president of MCHA,  
8 was he not?

9 A. Yes, but also co-employed by  
10 MCHC.

11 Q. What evidence do you have that  
12 Mr. Yoshisato was a co-employee of MCHA and  
13 MCHC?

14 A. Over the years, I've worked  
15 with many Japanese presidents of many of  
16 our affiliates and over many years, I  
17 learned to, or I was told information that  
18 led me to believe that they still retained  
19 their positions at the parent company  
20 during their tenure as, during their three  
21 to five years, at the rotation through the  
22 American affiliate so that their pensions  
23 stayed in place, that they didn't cut --  
24 their employment was not severed. It was  
25 my understanding their employment was not

1 J. FISCHMAN

2 severed from the parent company when they  
3 moved to the affiliate company.

4 Q. So let me make sure that the  
5 record is clear because number one, this is  
6 what you believe to be the case based on  
7 conversations, correct, this is what you've  
8 testified based on conversations?

9 A. Yes. That's because we haven't  
10 gotten discovery yet.

11 Q. Who are the individuals, and  
12 you know that I represent MCHA. MCHC's  
13 counsel is here, Jerry Fortinsky and Sam  
14 Jolly, they represent MCHC. So when you're  
15 asking about discovery pertaining to MCHC,  
16 that is not my purview but let me make sure  
17 that the record is clear. You know that  
18 Mr. Yoshisato was the president of MCHA  
19 appointed by the MCHA board, correct?

20 A. And who were the board members  
21 who appointed him?

22 Q. I'm asking you the board for  
23 MCHA appointed Mr. Yoshisato president,  
24 correct?

25 A. Yes.

1 J. FISCHMAN

2 Q. And that was president of MCHA,  
3 not any other --

4 A. Yes.

5 Q. -- business entity, or any  
6 other business affiliate, correct, and that  
7 was in the US, correct?

8 A. Actually I don't know the  
9 answer to that because I was not privy to  
10 those board documents and that board  
11 meeting could have taken place in the US.  
12 But it could have also taken place in  
13 Japan, because I believe two board members  
14 of MCHA are members, are employees of MCHC  
15 or MCC.

16 Q. Mr. Yoshisato, when he was  
17 president of MCHA, was physically in the  
18 United States; isn't that right?

19 A. Mmhmm.

20 Q. Is that a yes?

21 A. Yes.

22 Q. And Ms. Costa was a member of  
23 the MCHA board, correct?

24 A. If you can list the members for  
25 me, it would be easier for me to answer

1 J. FISCHMAN

2 that question.

3 Q. Do you have any reason to  
4 dispute that Ms. Costa was a member of the  
5 MCHA board?

6 A. I have no reason to dispute it.  
7 I believe she was the secretary of numerous  
8 boards during her tenure.

9 Q. In the evaluations you've seen,  
10 there was never input in these evaluations,  
11 during the time you were at MCHA that were  
12 -- any input from MCHC, correct?

13 A. I don't know who Donna spoke  
14 with before she completed her annual  
15 reviews. She often told me that she spoke  
16 to multiple businesses to get their  
17 feedback on her attorneys.

18 Q. Is it your testimony that you  
19 believe that MCHC had input on your  
20 evaluations?

21 A. I think I thought I just  
22 answered that, that she spoke with numerous  
23 business leaders that I had provided input  
24 or support to in a given year I was doing  
25 work for MCHC or MCC, yes, she would have

1 J. FISCHMAN

2 spoken to them. I don't actually know who  
3 she spoke with.

4 Q. So you don't know who she spoke  
5 with. So you're assuming that she may have  
6 gotten feedback from individuals at MCHC,  
7 correct?

8 A. Yes.

9 Q. And if there were to be any  
10 input from MCHC, that was because they were  
11 clients of MCHA, correct?

12 A. Not necessarily. So the way  
13 that things worked at MCHA was that nearly  
14 our entire budget came from two sources of  
15 income, if you will. Since MCHA was not a  
16 profit center of any kind and had no sales,  
17 it simply was a department arm of MCHC.

18 So it was a legal department in  
19 the United States, the tax department in  
20 the United States, the internal audit  
21 department in the United States, and I know  
22 that MCHC provided funding for our entire  
23 budget, also supported by each of the  
24 businesses that we provided support to.

25 So the budget would be made up

1 J. FISCHMAN

2 of input from MCHC and also all of the  
3 American affiliate companies that we have  
4 legal service agreements with would also  
5 pay a portion of our budget.

6 So I would imagine that every  
7 year that budget is reviewed and it is  
8 reviewed with the understanding of how many  
9 attorneys, what their salaries are going to  
10 be, what their bonuses are going to be, and  
11 what their new salaries for the coming year  
12 are. So it's my understanding that during  
13 those budgetary discussions, I believe that  
14 all of the attorneys would be evaluated  
15 because our compensation was partially  
16 coming from MCHC.

17 MS. COLWIN: Enrique, I want  
18 that testimony marked.

19 Q. From 2008 to 2014, we've  
20 already established that you reported to  
21 Ms. Costa and you had responsibility for  
22 important clients and sensitive matters; is  
23 that right?

24 A. Yes.

25 Q. And during 2008 to 2014, Ms.

1 J. FISCHMAN

2 Costa encouraged you to broaden your  
3 expertise with particular emphasis on  
4 employment laws; isn't that right?

5 A. Yes.

6 Q. So you would be the go-to  
7 employment lawyer for MCHA inhouse?

8 A. I was, yes.

9 Q. You were encouraged to attend  
10 seminars; isn't that right?

11 A. Sure.

12 Q. And in a lot of your  
13 evaluations there were particular seminars  
14 that Ms. Costa would recommend for you to  
15 go and attend, correct?

16 A. I guess I can't remember  
17 whether or not those were written into the  
18 documents, but if you want to point me to a  
19 page I'd be happy to say that it says that.  
20 But I definitely did continuing ed,  
21 throughout obviously we all have continuing  
22 ed requirements for our bar admissions.

23 Q. And it has been for a long  
24 time?

25 A. Yes.

1 J. FISCHMAN

2 Q. And there's no reason for you  
3 to believe that when you were elevated to  
4 assistant general counsel that you were  
5 subject to discrimination, correct?

6 MR. BERMAN: Object to form.

7 A. No. I earned that.

8 Q. At the time that you were  
9 elevated to assistant general counsel, Ms.  
10 Costa was also promoted. She became the  
11 executive VP making her the second highest  
12 ranking executive at MCHA, correct?

13 A. Yes.

14 Q. Because Mr. Yoshisato was  
15 president of MCHA at the time?

16 A. I don't remember when that was.  
17 I actually didn't know that that was at the  
18 same time to be honest.

19 Q. So at the time that you were  
20 elevated to assistant general counsel, you  
21 had Ms. Costa as the EVP and you had Ms.  
22 Roach as the most senior members of the  
23 legal department, correct?

24 A. I'm sorry, what year was that?

25 Q. When you were elevated to

1 J. FISCHMAN

2 assistant general counsel.

3 A. Again what year was that?

4 Q. 2013.

5 A. So what's your question?

6 Q. At the time that you were  
7 appointed to assistant general counsel, the  
8 two highest ranking individuals at MCHA's  
9 legal department were Ms. Costa and  
10 Ms. Roach, correct?

11 A. Yes. So I -- yes, I was.

12 Q. And as an assistant general  
13 counsel, you did not have any direct  
14 reports, correct?

15 A. I believe I supervised the  
16 legal -- can you remind me of who the  
17 members of the department were at that  
18 time?

19 Q. We said it earlier in the  
20 record but we'll just have to go --

21 A. In 2013, if you don't mind.

22 Q. It would be Ms. Roach,  
23 Ms. Costa, Mr. Yoshisato.

24 A. No, he's not in the legal  
25 department.

1 J. FISCHMAN

2 Q. As president of the MCHA.  
3 Strictly in the legal dept?

4 A. Yes.

5 Q. While we're getting that I'm  
6 going to move on. Did Ms. Costa ever say  
7 to you that she wanted you to take on a  
8 more management leadership role now that  
9 you had been promoted to assistant general  
10 counsel?

11 A. I going to hold off answering  
12 that question until you tell me how many  
13 people are in the legal department.

14 Q. We're going to continue. This  
15 is our deposition, Ms. Fischman.

16 A. The thing is that I want you to  
17 understand that there are like four people  
18 in the legal department. So when you say  
19 take on a more leadership role, who am I  
20 leading? It's a very small department,  
21 Mercedes, so I just don't know. I want to  
22 answer you but I want to answer you  
23 accurately in the context in which we were  
24 all operating.

25 Q. So you're saying that you don't

1 J. FISCHMAN

2 have any independent recollection of 2013?

3 A. Well, I'll wait for you to give  
4 me -- you want me to answer a question, you  
5 got to give me the context.

6 Q. Well, then we're taking a  
7 break.

8 A. Okay.

9 THE VIDEOGRAPHER: The time on  
10 the video monitor is 11:44 a.m. We  
11 are off the record. This ends Media  
12 1.

13 (Whereupon, a short recess was  
14 taken.)

15 THE VIDEOGRAPHER: We are back  
16 on the record. The time on the video  
17 monitor is 12:15 p.m. This starts  
18 Media 2.

19 Q. Ms. Fischman, we took a break.  
20 You had asked that we locate the  
21 individuals that worked with your  
22 colleagues when you were promoted to  
23 assistant general counsel, correct?

24 A. Yes.

25 Q. And that was in 2013; is that

1 J. FISCHMAN

2 right?

3 A. Yes.

4 Q. When you were promoted,  
5 correct? And it's your testimony that you  
6 couldn't recall the individuals that worked  
7 with you at that time; is that right?

8 A. That wasn't my testimony. I  
9 just asked if you could give me a list of  
10 who they were in 2013.

11 Q. So when I asked you to identify  
12 the individuals what worked with you in  
13 2013, you had the intellectual capital to  
14 provide those names to us on the record, is  
15 that your testimony?

16 MR. BERMAN: Object to form.

17 A. I simply asked you to identify  
18 them because I worked at Mitsubishi from  
19 2008 to --

20 Q. Ms. Fischman, I just want an  
21 answer to my question.

22 MS. COLWIN: Can I ask the  
23 question again. Move to strike.

24 (Whereupon, the referred to  
25 question was read back by the

1 J. FISCHMAN

2 Reporter.)

3 A. I couldn't remember exactly who  
4 was there at that particular time so I  
5 asked you to provide them.

6 Q. So before I give you the list,  
7 why don't you the identify the individuals  
8 you recall?

9 A. In the legal department?

10 Q. Yes.

11 A. 2013, Donna Costa, Jennifer  
12 Fischman, Katherine Roach, maybe Andrew  
13 Sezar (phonetic), maybe Joe Sherinsky, and  
14 Kelli Troccoli.

15 Q. You had -- go ahead.

16 A. I'm sorry and I think there was  
17 a legal intern, sorry, someone from Japan  
18 who interns in the office from MCHC.

19 Q. Was that Kaz Kashima  
20 (phonetic)?

21 A. Kaz, yes, that's his name, Kaz,  
22 thank you.

23 Q. There was also a Mikosami  
24 (phonetic), correct?

25 A. Miko, yes. I think Miko was

1 J. FISCHMAN

2 later. I don't recall the exact dates that  
3 Kaz was there and I don't recall the exact  
4 dates that Mika (phonetic) and I can't  
5 remember who was first.

6 Q. Okay. So we have the complete  
7 list when you were promoted. It was indeed  
8 Ms. Costa, as you already testified,  
9 yourself, Ms. Roach, Mr. Sezar, Ms.  
10 Troccoli, and Kaz Kashima and Miko Yusami  
11 (phonetic), correct?

12 A. Kaz and Miko wouldn't have been  
13 there at the same time.

14 Q. Do you believe it was Kaz in  
15 2013?

16 A. Can you give me a specific date  
17 of 2013?

18 Q. We don't have the date. It is  
19 your best recollection as to what you  
20 remember.

21 A. I'm sorry, Mercedes, I simply  
22 don't remember when Kaz was there and when  
23 he left and when Mika -- now I do recall  
24 that Mika, I think, replaced Kaz so if they  
25 overlapped, it would have been for maybe

1 J. FISCHMAN

2 two, three weeks because she's a -- they  
3 would have been trainees. That's what we  
4 referred to them as, trainees, so we have  
5 -- why don't you ask your next question.

6 Q. So I've given you who was in  
7 the legal department. You had testified  
8 under oath that you believe that you had  
9 one of the legal interns as a direct report  
10 when you were an assistant general counsel,  
11 correct?

12 A. If you just give a minute.  
13 I'll be honest I don't totally recall if I  
14 was responsible to oversee Kaz in 2013. I  
15 may have been.

16 Q. We discussed the document,  
17 1106, in your earlier testimony and this is  
18 a document that you have in front of you,  
19 it's Bates stamped 1106. I'm just calling  
20 your attention to 1106. You testified  
21 under oath that you did not believe the  
22 content of this exchange between Ms. Costa  
23 and Mr. Fujiwara, correct?

24 A. Just to be specific, I would  
25 rather if you read back what I testified

1 J. FISCHMAN

2 because I don't want to contradict what I  
3 said.

4 Q. To the extent that I asked a  
5 question that's inaccurate, correct me. In  
6 your earlier testimony you said that you do  
7 not believe that Mr. Yoshisato was the  
8 individual who had this exchange with this  
9 Ms. Costa that you should be elevated to  
10 acting general counsel, correct?

11 A. I think my testimony was, and  
12 of course we can read it back later, was  
13 that I would rather rely on the message  
14 that Yoshisato sent than Donna Costa's  
15 interpretation of that message or her  
16 relaying of a message because she may have  
17 interpreted it differently.

18 Q. Do you have a single  
19 contemporaneous written document that  
20 states that Mr. Yoshisato did not have this  
21 communication with Ms. Costa pertaining to  
22 your elevation to acting general counsel?

23 A. The documents --

24 Q. That's a yes or no, Ms.

25 Fischman. Yes or no, you either have it or

1 J. FISCHMAN

2 you don't.

3 A. I don't have any documents of  
4 Mr. Yoshisato.

5 Q. Okay. You testified that there  
6 were communications that you had with Ms.  
7 Costa where she said to you before you were  
8 going to trips to Japan, to leave your  
9 personality here. Do you recall that  
10 testimony?

11 A. Yes, I do.

12 Q. Do you have a single  
13 contemporaneous writing that where you, in  
14 fact, put that in writing and made an  
15 allegation of discrimination pertaining to  
16 that particular exchange that you had with  
17 Ms. Costa?

18 MR. BERMAN: Object to form.

19 A. I don't have a writing of where  
20 I complained of that discrimination because  
21 I think it was hard to complain when your  
22 general counsel is the one discriminating  
23 against you and who -- I think I was  
24 intimidated to complain, but I certainly  
25 told my family about that and it shook me.

1

J. FISCHMAN

2

Q. But my question is very clear.

3

Do you have something in writing which you

4

state that when Ms. Costa said to you to

5

leave your personality, you believe that

6

you were being targeted and treated

7

unfairly, yes or no?

8

A. I already answered that.

9

Q. So the answer is no?

10

A. I believe the answer was that I

11

don't have a writing, but it hurt me

12

deeply.

13

Q. Okay. And you said that you

14

disclosed it to family members. Who in

15

particular did you speak to?

16

A. My husband.

17

Q. Anyone else?

18

A. My mother and my father.

19

Q. And these conversations that

20

you had with your husband were

21

contemporaneous to the discussions you had

22

with Ms. Costa about your personality?

23

A. Yes.

24

Q. And the conversations you had

25

with your mother were contemporaneous to

1 J. FISCHMAN

2 the time that you had this discussion  
3 regarding your personality with Ms. Costa?

4 A. Yes.

5 Q. And the discussions you had  
6 with your father, was that also  
7 contemporaneous to the time you had  
8 discussions with Ms. Costa about your  
9 personality?

10 A. I believe it would've been at  
11 the same time, yes.

12 Q. You made a broad sweeping  
13 statement on the record, under oath, that  
14 there were a lot fabrications. Do you  
15 recall that?

16 A. Yes.

17 Q. What written documents can you  
18 identify on the record that establish those  
19 fabrications that you've alleged occurred?

20 MR. BERMAN: Object to form.

21 A. I would say every document that  
22 talks about me that you have produced in  
23 2015.

24 Q. Identify which documents you're  
25 referring to in particular?

1 J. FISCHMAN

2 A. I didn't come here with a list  
3 of documents.

4 Q. Which are the ones that you  
5 recall to the best of your recollection?

6 A. A draft e-mail to Ken Fujiwara  
7 which she wrote in August of 2015.  
8 Comments that she made to Pat Saunders  
9 during meetings, during August, again of  
10 2015, and the mid-year review of  
11 November 2015.

12 Q. You made a broad sweeping  
13 statement on the record, under oath, that  
14 Ms. Costa lies. What lies in particular,  
15 as you sit here today, to the best of your  
16 recollection, do you recall?

17 A. Yes. The statements that she  
18 made in those documents that I just told  
19 you about.

20 Q. And so that the record is  
21 clear, the documents you've identified you  
22 believe that Ms. Costa lied?

23 A. Yes.

24 Q. The draft e-mail to  
25 Mr. Fujiwara, the meetings that she had in

1 J. FISCHMAN

2 which she disclosed certain information to  
3 Pat Saunders in August of 2015 and the  
4 mid-year review in 2015; is that accurate?

5 A. Yes.

6 Q. You've identified what you  
7 believe to be unfair criticisms of your  
8 performance, correct, on the record? Let  
9 me retract.

10 A. I haven't, no.

11 Q. You have identified, on the  
12 record, that you believe that some of the  
13 commentary that you have received from Ms.  
14 Costa was unfair, correct?

15 A. I didn't testify to that and  
16 you'd have to point to a document which I  
17 just actually told you about where I  
18 believe they're not just unfair but  
19 complete fabrications.

20 Q. You'd agree with me that you  
21 were not present when Ms. Costa had  
22 coaching sessions with other employees at  
23 MCHA legal department, correct?

24 MR. BERMAN: Object to form.

25 A. Can you reask that? It's very

1 J. FISCHMAN

2 confusing the way you're --

3 Q. When Ms. Costa was providing  
4 feedback to other members of the legal  
5 department, you were not present for each  
6 and every conversation she had with them,  
7 correct?

8 A. Correct.

9 Q. I'm going to call your  
10 attention to December of 2014 when Ms.  
11 Costa informed you that you were going to  
12 be elevated to acting general counsel  
13 effective April 1, 2015 where Ms. Costa had  
14 a conversation with you one on one. Is  
15 that right?

16 A. That's correct.

17 Q. And that's when, in this  
18 conversation she had in December of 2014,  
19 is when she had informed you that you were  
20 going to be elevated effective April 1st,  
21 2015, correct?

22 A. Yes.

23 Q. Now by then Ms. Costa had had  
24 multiple elevations in her own career at  
25 MCHA; isn't that right?

1 J. FISCHMAN

2 A. I don't actually know what all  
3 of the elevations that Ms. Costa had  
4 personally. I don't know.

5 Q. Were you aware, are you not,  
6 that she was hired as general counsel much  
7 before you were hired in 2008, she was  
8 there beginning of 1996; isn't that right?

9 A. You'd have to ask her. Yes. I  
10 mean I wasn't there.

11 Q. You don't have any reason to  
12 dispute that she was hired as general  
13 counsel at MCHA in 1996; is that right?

14 A. MCHA as the successor company.

15 Q. Yes.

16 A. I did -- so in 1996 I'm not  
17 really sure what company she worked at. I  
18 think it was MCA back then and then, yeah,  
19 and then --

20 Q. So we are in agreement, she was  
21 general counsel and she was then elevated  
22 and received the designation as chief  
23 compliance officer, correct?

24 A. So I'm not sure if she was  
25 elevated to become chief compliance

1 J. FISCHMAN

2 officer. I'm not sure that there was a  
3 compliance program at the company, so I  
4 don't have information on that, so I don't  
5 know that she was elevated into a position  
6 as a -- I guess I wouldn't see that as an  
7 elevation. I would see that as an  
8 additional job duty.

9 Q. As you sit here today, what was  
10 your understanding of the number of  
11 positions that Ms. Costa had at MCHA?

12 A. She was general counsel and  
13 chief compliance officer. What are you  
14 looking for?

15 Q. I'm asking you a question.  
16 Tell me what were the positions that she  
17 held?

18 A. Those two positions and I'm  
19 sorry, and she was also secretary of, I  
20 believe, many of the affiliate companies.

21 Q. She was also an officer, was  
22 she not?

23 A. Yes, she was an officer at  
24 MCHA.

25 Q. What were the positions as

1 J. FISCHMAN

2 officer that you recall?

3 A. I don't --

4 Q. She was vice president,  
5 correct?

6 A. I believe so.

7 Q. Executive vice president,  
8 correct?

9 A. I guess so.

10 Q. No guessing. You have no  
11 reason to dispute the fact that she had  
12 been EVP at some point before being  
13 elevated to president at MCHA, correct?

14 MR. BERMAN: Object to form.

15 A. I have no reason to dispute  
16 what you're telling me, of course not.

17 Q. Now the reason that Ms. Costa  
18 was talking to you about this general  
19 counsel position is that she had been  
20 elevated to president of MCHA; isn't that  
21 right?

22 A. Yes.

23 Q. And in your reaction, when  
24 Ms. Costa had this conversation in  
25 December 2014, is one of surprise, were you

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J. FISCHMAN

not?

A. I don't remember if I was surprised, but we had talked about her taking that position or moving into the that position over the years and she had always said that she would never have wanted that position, so yeah, I think that surprise is probably an accurate description.

Q. Weren't you surprised when she said to you that you were going to be promoted to acting general counsel?

A. Why would I be surprised?

Q. I'm asking you a question.

A. No, I was the next in line. I was the most senior attorney in the department. I was not surprised at all.

Q. Didn't you say to Ms. Costa in this exchange, in December of 2014, that you thought you were being called into her office because she was going to fire you?

A. As a joke.

Q. So you did say that to her?

A. Yeah, I did. It was a joke,

1 J. FISCHMAN

2 but why would I have been fired? Did you  
3 see my 2014 performance review? Why would  
4 I say that with any seriousness?

5 Q. So you're saying that when you  
6 disclosed that to Ms. Costa, you were just  
7 kidding; is that right?

8 A. Yes.

9 Q. Now in that meeting Ms. Costa  
10 was very direct with you about the fact  
11 that you were about two to three years away  
12 from being able to take on the  
13 responsibility of general counselor and  
14 chief compliance officer; isn't that right?

15 MR. BERMAN: Object to form.

16 A. I don't recall her being very  
17 direct about that, no.

18 Q. Then let me rephrase. In that  
19 meeting Ms. Costa said to you you were  
20 about two to three years away from being  
21 able to take on the responsibility of  
22 general counsel and chief compliance  
23 officer; isn't that right?

24 MR. BERMAN: Object to form.

25 A. I don't recall.

1 J. FISCHMAN

2 Q. Do you have any reason to  
3 dispute Ms. Costa's recollection of that  
4 conversation --

5 MR. BERMAN: Object to form.

6 Q. -- pertaining to the fact that  
7 you were two to three years away from being  
8 elevated to general counsel --

9 MR. BERMAN: Object to form.

10 MS. COLWIN: You can say it  
11 once. Don't interrupt me, please.

12 MR. BERMAN: I'm not  
13 interrupting. I'm insuring that I  
14 get it in before the witness answers.

15 MS. COLWIN: Okay. I'm sure  
16 you had a conversation with your  
17 client and she's an experienced  
18 lawyer. She knows to pause after a  
19 question is being asked so you can  
20 object.

21 Q. You have no reason to dispute  
22 Ms. Costa's recollection having told you,  
23 in December of 2014, that you were two to  
24 three years away from being able to take on  
25 the responsibilities of general counsel and

1 J. FISCHMAN

2 chief compliance officer, correct?

3 MR. BERMAN: Object to form.

4 A. So I have a recollection of her  
5 saying that she would have liked another  
6 two to three years but that here we were  
7 and, you know, two to three years, why? I  
8 think I remember challenging that and  
9 saying why? I've been here for seven years  
10 and what, 16 years of 17 years of legal  
11 practice. How many years did she have when  
12 she took on the general counsel? I was  
13 experienced as you have noted multiple  
14 times today. I was an extremely  
15 experienced lawyer. I had, in my  
16 background, worked for a federal judge. I  
17 have worked at two national law firms. I  
18 have worked at a Fortune 500 company in a  
19 senior position for seven years, and now I  
20 had worked at Mitsubishi Chemical, in a  
21 small law department, for seven years. So  
22 yeah, I thought that was a -- I think she  
23 said that, but it was part of a larger  
24 discussion about the role.

25 Q. You would agree with me that

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J. FISCHMAN

the role of -- well, let me just step back for a moment. You said that you worked for a federal judge. That was your --

A. Post --

Q. But wasn't that an internship program that you had worked with?

A. So if you'd like me to explain that --

Q. No, I'm asking you that was an internship program, correct?

A. It was not an internship program. So when I graduated from Boston University Law School, which is a top 25 top tier law school in the United States.

Q. My son has (inaudible). I'm aware.

A. I moved to Los Angeles and had the got fortune of meeting Kim McLane Wardlaw, who was at that time, before she was elevated to the Ninth Circuit, a federal judge and we met through a variety of acquaintances and she had just hired her two clerks. She was a new federal judge and she had just hired her two clerks, one

1 J. FISCHMAN

2 of whom had worked with her in her law  
3 firm, but she told me that she could use  
4 another set of hands and that I would be  
5 treated just as the other two law clerks,  
6 which meant reviewing legal pleadings,  
7 doing research writing opinions, but that I  
8 was going to be unpaid so that I -- would I  
9 be interested in doing that? So yes, I  
10 said yes, and I worked with her from the  
11 time I took the bar at the end of July, so  
12 the beginning of August until I got a job  
13 in February 6th months later at Fried  
14 Frank.

15 (Whereupon, Ms. Fischman's CV  
16 was marked as Defendant's Exhibit 7 -  
17 9 for identification as of this  
18 date.)

19 Q. I'm showing you what's been  
20 marked as Defendant's Exhibit 7 to 9. That  
21 is your CV, is it not?

22 A. It's a version of it, yeah.

23 Q. And I'm going to direct you to  
24 the second page which is Bates stamped  
25 000008 and it says US District Court

1 J. FISCHMAN

2 Central District of California.

3 A. Yeah.

4 Q. Honorable Kim McLane Wardlaw,  
5 extern clerk, August 1996 to February 1997,  
6 correct?

7 A. That's what I just described to  
8 you in a longer narrative, yes.

9 Q. And everything that you set  
10 forth in this CV is accurate, is that  
11 right?

12 A. Yes.

13 Q. You would agree with me that  
14 the general counsel and chief compliance  
15 officer position is a very significant  
16 position, correct?

17 A. What do you mean by  
18 significant? Yes, it's a big deal.

19 Q. Okay. Now in this conversation  
20 that Ms. Costa with you in December of  
21 2014, she said to you that she thought you  
22 were on the right track but you were not  
23 ready for the tremendous increase of  
24 responsibility that came with being general  
25 counsel and CCO. Do you recall her saying

1 J. FISCHMAN

2 that?

3 A. I don't recall that  
4 specifically.

5 Q. And do you recall her saying  
6 think about it, don't give an answer at  
7 that very point in December of 2014, think  
8 about this, go off -- I believe you had a  
9 vacation planned, did you not?

10 A. Yes.

11 Q. And to think about it during  
12 vacation and to come and speak to her about  
13 whether you would accept it. Do you recall  
14 --

15 A. No, I believe I accepted it  
16 right then and there or the following day.  
17 I did not think about it. She did not tell  
18 me to go off and think about it over that  
19 vacation, because by that vacation I had  
20 told my family that I had accepted this  
21 position.

22 Q. So tell us, to the best of your  
23 recollection, as you sit here today, what  
24 you said to Ms. Costa and what she said to  
25 you during that exchange in December of

1 J. FISCHMAN

2 2015.

3 A. That's six years ago. I can't  
4 recall.

5 Q. I'm only asking for your best  
6 recollection.

7 A. Of the entire -- we were in her  
8 office for hours. I can't recall any of  
9 that. I mean I can recall specific  
10 details. She offered me this job, she said  
11 it was a big job. She said you're going to  
12 have to own the compliance program. I said  
13 no problem, I will get up to speed, I will  
14 own it, I will spend an enormous amount of  
15 time on it. I asked her who was going to  
16 backfill. We talked about the fact that I  
17 would need to hire someone to replace me  
18 but it wasn't going to be someone senior,  
19 it was going to be a very junior person  
20 because that's all we had the budget for,  
21 and that person ultimately became Steven  
22 Rose, who was hired sometime during the  
23 spring, but that I was going to continue to  
24 maintain being responsible for a multitude  
25 of companies while taking on this

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additional responsibility. Yeah, it was going -- it's a general counsel position, so as you would expect it had a great deal of responsibility.

Q. You are familiar with the job description for general counsel, correct?

A. I've never seen a job description for the general counsel position, no.

Q. In the exchange of documents in this litigation, you were made aware that there were job descriptions provided, were you not?

A. For the general counsel position, no, I'm sorry, I've never seen it.

Q. I'm going to show you --

A. I can't say I have actually reviewed every document that was produced yet.

Q. But it wasn't flagged by your counsel to review; is that right?

MR. BERMAN: Object to form.

Privileged communications should not

1 J. FISCHMAN

2 be revealed.

3 Q. I'm going to show you a  
4 document. It's Bates stamped 817, 822, and  
5 I'm going to direct your attention to 819  
6 to 820. Look at 821. So Ms. Fischman, I  
7 understand your testimony earlier, this is  
8 the first time you're seeing this  
9 particular job description, correct?

10 A. This is the first time I have  
11 ever seen this job description. I don't  
12 believe that there was such a document in  
13 2014 when I had a conversation with Donna  
14 Costa.

15 Q. Do you have something in  
16 writing that corroborates the assumption  
17 you have that this document didn't exist in  
18 2014?

19 A. I have never seen this document  
20 before. It was not presented to me in  
21 December 2014 or any time thereafter.

22 Q. So that's the basis of your  
23 belief?

24 A. That is the basis of my belief.

25 Q. But you have nothing in writing

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2 that establishes that fact, correct?

3 A. I have nothing in writing that  
4 establishes that a document didn't exist?  
5 No.

6 Q. You never asked for a job  
7 description in writing, correct?

8 A. I never asked for a job  
9 description in writing, correct.

10 Q. Did you ever ask for a job  
11 description in verbal communication?

12 A. I never asked for job  
13 description ever.

14 Q. Take a look at what is set  
15 forth --

16 A. I'll also note that I never  
17 asked for job description of assistant  
18 general counsel, which is on Defendant's  
19 Exhibit 817, but I probably at some point  
20 or another saw a job description for  
21 corporate counsel as part of the interview  
22 back in 2008 but I don't know that it was  
23 this job description, and I've got to guess  
24 that it wasn't since this says MCHA on it  
25 and I was hired at MCUSA.

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2 Q. Take look at 821 to 822. Is  
3 this an accurate description of what the  
4 job duties and responsibilities were for  
5 general counsel and CCO at MCHA?

6 A. I'm going to take a few minutes  
7 to take a look at this.

8 Q. Sure. Why don't we go off the  
9 record.

10 THE VIDEOGRAPHER: The time on  
11 the video monitor is 12:47 p.m. We  
12 are off the record.

13 (Whereupon, an off-the-record  
14 discussion was held)

15 (Whereupon, a lunch break was  
16 taken.)

17 THE VIDEOGRAPHER: We are back  
18 on the record. The time on the video  
19 monitor is 1:40 p.m.

20 Q. Ms. Fischman, before the break  
21 we were talking about the document that is  
22 identified as Bates stamp 821 to 822. Have  
23 you had a chance to review this document?

24 A. I have.

25 Q. And is it an accurate depiction

1 J. FISCHMAN

2 of what the duties and responsibility were,  
3 as general counsel and CCO at MCHA?

4 A. Yes.

5 Q. And is there anything that  
6 needs to be added to what's identify in  
7 this document?

8 A. I'll be honest, as I quickly  
9 read through it, I didn't read it for  
10 comprehension, like for comprehensiveness  
11 but rather just to identify that these were  
12 the key responsibilities, so at this time I  
13 can't say that there's anything missing.

14 Q. Is there any document that  
15 would refresh your recollection as whether  
16 or not there were additional duties and  
17 responsibilities that you had as general  
18 counsel and CCO?

19 A. Can you repeat the question?

20 Q. Is there a document that exists  
21 that would refresh your recollection as to  
22 whether or not there were additional duties  
23 and responsibilities that you executed as  
24 acting general counsel and CCO?

25 A. Not that I can think of at this

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time.

Q. Do you believe that the promotion itself that was offered to you in December 2014 is an act of discrimination?

A. I believe that the promotion to acting rather than full general counsel was an act of discrimination, yes.

Q. What is the factual basis for your belief that your elevation to acting general counsel as opposed to general counsel was discriminatory?

A. The basis is that no other person that I was aware of, at the time or since, was, in our company, promoted to an acting position and also because there were effectively no other women, other than Donna Costa, in an officer position at that time worldwide.

So I concluded, based on that fact, and belief, also because during the course of our meeting, Donna said a few things to me that made me believe that it was not her decision fully. One was I couldn't get you through Japan; two, it may

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2 never happen, and at no time did she say if  
3 you execute X, Y and Z, you will become the  
4 GC. In fact, she did just the opposite and  
5 said I can't make any promises this is ever  
6 going to happen, even though I repeatedly  
7 asked for the full promotion.

8 I also believe at the time that  
9 Yoshisato-san may not have supported it  
10 because I had just completed his -- the  
11 allegation and investigation into  
12 complaints of sexual harassment against him  
13 and during the course of that  
14 investigation, I had to sit with him and  
15 ask him extremely personal questions one on  
16 one, and so I felt that he may have been  
17 discriminating against me for putting him  
18 in that position and asking him those  
19 questions.

20 Q. Any other factual basis other  
21 than what you've just identified?

22 A. During the course of that  
23 meeting, I have no other -- those were the  
24 main bases.

25 Q. Ms. Fischman, you understand

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that in the fall of 2014, Ms. Costa had the opportunity to actually elevate your male colleague, Andy Sezar, who was also seeking a position of promotion within the company. Are you aware of that?

A. No.

Q. Are you aware that in the fall of 2014 Mr. Oliva was in conversation with Ms. Costa about wanting to make a change from Bristol Squibb to another company and was seeking references from her?

A. No.

Q. Do you have any reason to dispute the fact that when Ms. Costa testifies she will set forth that she had opportunities to actually elevate both Mr. Sezar and Mr. Oliva -- well not elevate Mr. Oliva, he was in a different company, but bring in Mr. Oliva, in the fall of 2014, as general counsel, but she did not?

MR. BERMAN: Object to form.

A. Can you restate that in a more simple form because I'm not sure --

Q. Do you dispute that Ms. Costa

1 J. FISCHMAN

2 had the opportunity to elevate Mr. Sezar,  
3 who was your colleague at MCHA, to acting  
4 general counsel but she chose not to,  
5 correct?

6 A. I have no idea whether or not  
7 she considered Andy in that position. I do  
8 know that during the course of the data  
9 dump that we went through, between December  
10 and April 2014 to 2015, that she disclosed  
11 that she had little confidence in his legal  
12 abilities and his competence as a lawyer.

13 Q. But my question is do you have  
14 reason to doubt her testimony that's going  
15 to come in and say that she could have  
16 elevated Andy Sezar or hired Nick Oliva in  
17 the fall of 2014 rather than you --

18 MR. BERMAN: Object to form.

19 Q. -- in the promotional position  
20 of acting general counsel?

21 A. Yes, I have reason to dispute  
22 that.

23 Q. Give us the factual basis for  
24 the reasons you dispute that?

25 A. I believe I gave you the

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2 factual basis in my prior response to your  
3 question.

4 Q. Only to Mr. Sezar. Now Mr.  
5 Oliva. Why is it that you have reason to  
6 doubt Ms. Costa's testimony that will come  
7 in that she could have brought Mr. Oliva in  
8 the fall of 2014 and not given you the  
9 opportunity to be promoted to acting  
10 general counsel?

11 A. I'm sorry, Mercedes, I don't  
12 have any understanding of what you're  
13 asking me. It sounds like a hypothetical  
14 like I have no personal knowledge of the  
15 interactions between Donna and Nick in  
16 2014, so I really can't answer that  
17 question from personal knowledge and I  
18 can't really opine on the hypothetical that  
19 she could have, might have, done something.

20 Q. Ms. Fischman, it's not a  
21 hypothetical. I'm directly stating to you  
22 when you hear the testimony from Ms. Costa,  
23 that in the fall of 2014 she could have  
24 brought Mr. Oliva in at that point because  
25 he was not -- he wanted to make a change to

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2 another company. He was available to come  
3 back to MCHA and she didn't give him that  
4 opportunity in the fall of 2014. That's  
5 her testimony that will come in. Do you  
6 have any reason to dispute it?

7 MR. BERMAN: Object to form.

8 A. Yes, I dispute because I have  
9 no personal knowledge of it and we have to  
10 wait and see what she testifies to. I  
11 can't say that she is going to say -- this  
12 isn't a real question, Mercedes. With all  
13 due respect, you're asking me to testify on  
14 which she's going to testify about when I  
15 don't have any idea.

16 Q. I'm asking you, it's not a  
17 hypothetical. I'm going to ask it again.  
18 In the fall of 2014, Ms. Costa was in  
19 communication with Mr. Oliva. She could  
20 have brought Mr. Oliva back in the fall of  
21 2014 and she did not. My question to you  
22 is do you have a factual basis for  
23 disputing the truth of that statement when  
24 it comes in as testimony?

25 MR. BERMAN: Object to form.

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2 A. Yes. My factual basis is that  
3 you have not presented me with any  
4 documentary evidence that that  
5 communication occurred so therefore I  
6 cannot say that what testimony Ms. Costa  
7 would provide will be truthful so that is  
8 my basis for saying no, I can't agree.

9 Q. Do you have a document that  
10 disputes that testimony in your possession?

11 A. Do I have a document that in  
12 2014 Donna was in contact with a former  
13 employee that I had never met? No, I don't  
14 have a document like that.

15 Q. And you have no document that  
16 actually disputes that fact, correct?

17 A. What are you referring to when  
18 you say that? When you say "that," what  
19 are you referring to?

20 Q. You have nothing that will  
21 controvert the testimony that will come in  
22 that Mr. Oliva and Ms. Costa were in  
23 communication in the fall of 2014; isn't  
24 that right?

25 A. I have no documentation that I

1 J. FISCHMAN

2 have --

3 Q. It's a yes or no, Ms. Fischman,  
4 so we can get through this. I have a long  
5 outline, I'd like to get through it.

6 A. I know. I would like to answer  
7 the question.

8 Q. It's a simple yes or no. Do  
9 you have a document that disputes it, yes  
10 or no? And we can move on.

11 A. I have no document that  
12 disputes that Donna Costa was in contact  
13 with Nick Oliva over I'm sure many years,  
14 since he left Mitsubishi Chemical prior to  
15 my employment there. I have no knowledge  
16 or documents of their interaction,  
17 friendship, or otherwise.

18 Q. In the meeting that we've been  
19 talking about, Ms. Fischman, didn't Ms.  
20 Costa say to you that you would have the  
21 opportunity to be promoted to general  
22 counsel and it would basically be a  
23 12-month period for that time period to  
24 prove yourself, didn't she say that to you?

25 A. She absolutely categorically

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2 did not say that to me. She never said  
3 that and she never said that there was a  
4 path to get there. In fact, she made it  
5 feel very doubtful, to which I responded  
6 that I was going to work as hard as I  
7 possibly could and do everything that  
8 possibly could to prove that I was capable  
9 of this position.

10 Q. She's president of MCHA,  
11 correct?

12 A. At that moment she had not  
13 become president yet.

14 Q. She was becoming president  
15 April 1, 2015, when you were becoming  
16 acting general counsel and CCO for MCHA,  
17 correct?

18 A. Correct.

19 Q. Her success as president of  
20 MCHA, part of it, is how successful you are  
21 in the position of acting general counsel  
22 and CCO; isn't that right?

23 A. I don't know the answer to that  
24 question.

25 Q. So is it your testimony that

1 J. FISCHMAN

2 Ms. Costa, as president of MCHA, would not  
3 have any repercussions if you failed  
4 miserably? Do you understand that there is  
5 a correlation between her wanting you to be  
6 successful in this new position and her  
7 elevation as president of MCHA?

8 A. Of course there's a  
9 correlation, yes.

10 Q. Didn't Ms. Costa say to you  
11 that this acting title would give you the  
12 time she thought you needed to prove  
13 yourself and go into the role of general  
14 counsel?

15 A. As it is occurs to me and  
16 you've now told me and revealed she'd been  
17 in contact with Nick Oliva during the fall  
18 of 2014 and that he was unavailable to make  
19 the move at that time, I now recall that  
20 no, I think she probably never anticipated  
21 I would stay in that role and she was  
22 holding me as a placeholder until he was  
23 more available later that year.

24 Now that I remember hearing a  
25 year later that he just started a role at a

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2 spin-off company of the major -- some  
3 pharma company that he had been at and he  
4 wasn't ready to leave. So actually now I  
5 do dispute that there was a possibility  
6 that he could've taken that.

7 Q. You have just identified on the  
8 record that you were a placeholder for Mr.  
9 Oliva. What document do you have to  
10 establish that?

11 A. I suppose we'll rely on  
12 documents that you produced that Mr. Nick  
13 and Donna were in contact in the fall of  
14 2014.

15 Q. That is not the answer to my  
16 question. You have identified yourself as  
17 a placeholder to Mr. Oliva. Identify the  
18 document that supports that.

19 A. I don't have a document,  
20 Mercedes.

21 Q. You state on the record that  
22 Mr. Oliva was not available in the fall of  
23 2014. That's not an accurate statement  
24 considering that he was moving from one  
25 company to the other, correct?

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A. So just to clarify, what I said stated was that a year later when he replaced me, I remembered hearing that he was starting a new position the year earlier and that it was that position that he was unhappy in. This was the story that I was told. I don't know who told me so honestly I can't really speak to Nick's specifics because I was not -- I never met him before November 30, 2015.

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Q. So Ms. Fischman, testimony will come in that Mr. Oliva was, in fact, available to make the move to MCHA in the fall of 2014. Do you have a factual basis to contradict that?

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A. The factual basis is that he didn't make the move.

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Q. Do you have a document? The reason why Mr. Oliva didn't make the move, and there will be testimony to that, is that he wasn't offered the position. So my question to you is do you have a basis to dispute the testimony that will come in that Mr. Oliva was available to make the

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2 move to MCHA in the fall of 2014 but was  
3 not given that opportunity?

4 A. I have no such document. But I  
5 would love to see Mitsubishi's  
6 documentation that hasn't been produced  
7 that supports that testimony just as my  
8 testimony you keep asking me for my  
9 documents, I would similarly like to see  
10 the same documents that Nick was considered  
11 for the position in 2014 or anybody else  
12 who was considered for the position in 2014  
13 or 2015.

14 Q. In this elevated promotional  
15 opportunity you had, in acting general  
16 counsel and CCO, you were also given a  
17 significant raise, were you not?

18 A. I was.

19 Q. You were increased to \$300,000,  
20 plus your bonus was increased to 25 percent  
21 of your base, isn't that right?

22 A. That is.

23 Q. You never negotiated for more  
24 money, did you?

25 A. I did not. In fact, because of

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the way the budgeting work from the money  
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Q. You've answered my question.

A. It was disclosed to me so.

Q. Ms. Fischman, you answered the question and I appreciate it. Paragraph 51 of the complaint -- you need a copy? In that paragraph, you allege that Ms. Costa said that it's -- the GC role -- is probably never going to happen. Now when Ms. Costa testifies, she will state that that was never stated during that conversation. Is it your testimony that she would be lying?

A. It is my testimony that she said the things that I say in this complaint, a hundred percent.

Q. So when she contradicts the particular statement that you make in paragraph 51, is it your testimony that Ms. Costa is lying?

A. Yes.

Q. The position of acting general counsel, Ms. Fischman, you understood that

1 J. FISCHMAN

2 that was a temporary role, did you not?

3 A. Yeah.

4 Q. In your complaint in paragraph  
5 112, you make a statement that your  
6 promotion, and all the decisions concerning  
7 your promotion, were made jointly by MCHA  
8 and MCHC with MCHC having final approval.

9 A. That's right. It says that.

10 Q. Who are you referring to at  
11 MCHC that you believe had that level --

12 A. Ken Fujiwara.

13 Q. And what document --

14 A. And perhaps others. I believed  
15 that the MCHC board members of MCHA would  
16 also have had approval over that as that  
17 position was an officer position in the  
18 company. I also believed that there were  
19 other members in Japan, other people in  
20 Japan, at high levels that were involved in  
21 decision making for high level executive  
22 positions at all affiliates not just MCHA.

23 Q. So as you sit here today, to  
24 the best of your best recollection, you  
25 identified Mr. Fujiwara. Who, as you sit

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2 here today, do you believe also had an  
3 input on your promotion? Identity, not  
4 just broad sweeping statements about who it  
5 might be, names of individuals who you  
6 believe had input.

7 A. Sakaguchi-san. I believe that  
8 there were other employees in MCHC.

9 Q. I'm asking for names, Ms.  
10 Fischman. What names do you remember?

11 A. Date-san, Date. At this  
12 moment, I cannot recall any others for the  
13 names. And let me also mention that I did  
14 not have direct contact with those  
15 individuals, so I may never have known  
16 their names.

17 Q. Do you have a document in your  
18 possession that supports your assumption  
19 that these individuals that you've  
20 identified, on the record, Mr. Fujiwara  
21 Mr. Sakaguchi and Mr. Date, had influence  
22 in your elevation to acting general  
23 counsel?

24 A. I do not have documents in my  
25 possession of such things; however, I

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2 believe that Donna took a trip to Japan in  
3 the fall of 2014, and it was typical for  
4 her to have high level discussions with  
5 such MCHC employees who had responsibility  
6 of overseeing the day-to-day operations at  
7 MCHA, and that's when she would have had  
8 these conversations and discussions about  
9 the future management of this business  
10 unit.

11 Q. You have no document that  
12 exists that supports your statement you  
13 just made that Ms. Costa went to Japan and  
14 may or may not have conversations about the  
15 future management of HCHA, correct?

16 A. Correct.

17 Q. You just stated on the record  
18 that you didn't have contact with  
19 individuals in Japan an MCHC; is that  
20 right?

21 A. Let me rephrase the way I  
22 answered that question. I did not have  
23 contact with respect to management issues  
24 with individuals in Japan. I was in  
25 contact with individuals located at MCHC,

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2 MCHJ, MCC, Mitsubishi Tanabe Pharma and  
3 other businesses for which I provided legal  
4 counsel.

5 Q. Take a look at Exhibit Bates  
6 stamped 1209. Ms. Fischman, do you  
7 recognize this document before you?

8 A. A-ha.

9 Q. And this is an e-mail  
10 communication that you sent to Ken  
11 Fujiwara, correct?

12 A. Sure.

13 Q. You what is this document?  
14 Describe what this is.

15 A. This is an e-mail  
16 congratulating Ken Fujiwara on his  
17 promotion to executive officer of MCHC.

18 Q. It was also, in your  
19 communication, did you not thank him for  
20 his support in your promotion?

21 A. Yes.

22 Q. And in it it said "which I am  
23 sure could not have happened without you."  
24 What did you mean by that?

25 A. That Mr. Fujiwara was

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2 instrumental in approving my promotion, or  
3 rather that he was instrumental in the  
4 decision regarding my promotion.

5 Q. So is it your testimony that  
6 Mr. Fujiwara had the most influence in your  
7 promotion?

8 A. I couldn't say if it was the  
9 most but he certainly had authority to  
10 approve my promotion.

11 Q. How do you explain what you  
12 wrote? "I also wanted to thank you for all  
13 your support in my promotion which I'm sure  
14 could not have happened without you."  
15 Doesn't that mean that you felt that Mr.  
16 Fujiwara had the utmost support in getting  
17 you elevated?

18 A. This is a congratulatory  
19 greeting where I was respectably trying to  
20 engage with an executive at MCHC where I  
21 was flattering him and where I was trying  
22 to garner his support. So the fact that I  
23 wrote "I want to thank you for your  
24 support" is flattery.

25 Q. I'm not focusing on the first

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2 part, I'm focusing on the second part,  
3 "which could not have happened without  
4 you," and by flattery do you mean that what  
5 you stated there was not true?

6 A. No. Why would you say that? I  
7 don't know what you mean, it's not true. I  
8 wrote to him "I want to thank you for all  
9 your support in my promotion which I am  
10 sure could not have happened without you,"  
11 and the reason I wrote I am sure could not  
12 have happened without you is because it was  
13 my firm belief, based on eight years of  
14 working at the company, that nothing we did  
15 at a high level in terms of the management  
16 of MCHJ -- sorry, MCHA, occurred without  
17 the full knowledge and support of MCHC  
18 individuals, especially and including  
19 Mr. Ken Fujiwara.

20 Q. What did you do, between  
21 December of 2014 and April 2015, to prepare  
22 for your new role as acting general  
23 counsel?

24 A. I did many things. I had  
25 multiple, probably weekly, several hour

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2 conversations with Donna where she provided  
3 me with data dump. Basically these are the  
4 areas that you may not be aware of that I  
5 do in this job. I tried to read some books  
6 on leadership. I started subscribing to  
7 Japanese websites, additional leadership  
8 websites. Some of that is included in my  
9 2015 goals. If you want to pull that out,  
10 you'll see a long list of things that I  
11 started working on.

12 Q. Did you read any books?

13 A. I'm sure I did.

14 Q. Do you recall, as you sit here  
15 today, what books you read?

16 A. No, I don't recall any of the  
17 names. I'm sure I read a book on  
18 leadership and I also had a book in my  
19 office at the time on Japanese business  
20 that I had either gotten from Donna early  
21 on in my tenure at Mitsubishi, and I think  
22 I reread that at the time.

23 Q. Do you still have copies of the  
24 books that you read?

25 A. No, and I didn't take any of

1 J. FISCHMAN

2 the books from my office when I left. I  
3 didn't take anything from my office when I  
4 left.

5 Q. The websites that you  
6 subscribed to, what websites were they?

7 A. Certainly Harvard Business  
8 Review. If you don't mind, I'd like to go  
9 back and look at this document to refresh  
10 my memory.

11 Q. Sure, not a problem.

12 A. So I think one of the things  
13 that I started doing, and again this is  
14 many, many years ago, 2015, and it's now of  
15 six years ago, but one of the things I was  
16 definitely engaging in more, I was going to  
17 be engaging in more in the overview of the  
18 compliance program, so I was looking at  
19 different compliance programs, I probably  
20 looked at different compliance websites,  
21 not just the one that we used.

22 I definitely was reviewing and  
23 reading different articles on going from  
24 being a peer to a leader; that was one of  
25 my transitions and I was very interested in

1 J. FISCHMAN

2 how to manage the relationships so I read  
3 several articles about that.

4 I met multiple times with our  
5 HR person, Pat Saunders. In fact, Pat was  
6 the only one I met with about my goals.  
7 These goals were never reviewed together  
8 with Donna. I only reviewed these with  
9 Pat. I did eventually leave them for Donna  
10 to look at but she never -- she and I never  
11 sat down and went through them.

12 Q. And just so the record is  
13 clear, you're looking at the document  
14 that's Bates stamped 64 to 76; is that  
15 right?

16 A. Yes, and I'm specifically  
17 looking at Bates stamps 70, 71, 72, 73, 74,  
18 75, 76 to refresh my memory.

19 Q. And we've already identified on  
20 the record that this is an accurate  
21 depiction; all the contents in this  
22 document itself are accurate, so we've  
23 established this, correct?

24 A. Yes.

25 Q. Isn't the fact that Ms. Costa,

1 J. FISCHMAN

2 during this time, met with you at least  
3 three times a week to talk about evolving  
4 into the general counsel role?

5 A. I couldn't say that it was  
6 three times a week. It was certainly once  
7 a week and it was certainly for several  
8 hours at a time, sure.

9 Q. And I understand that you were  
10 taking notes during that time.

11 A. Yes.

12 Q. Extensive notes, in fact,  
13 because these were hours that you were  
14 spending with Ms. Costa; isn't that right?

15 A. I would say I see some of them  
16 on your table there, if I'm not correct.  
17 Is that --

18 Q. These are not your notes, those  
19 are Ms. Saunders' notes. Do you have  
20 copies of the notes?

21 A. So I do have some notes that I  
22 took and we thought that we produced them,  
23 but we can't find them in our production  
24 last night so we'll be providing those.

25 Q. Please do.

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2 MS. COLWIN: I call for  
3 production. That's responsive to our  
4 discovery demands so we appreciate  
5 that.

6 MR. BERMAN: We'll produce  
7 them.

8 A. We just realized that they  
9 weren't there, but also I took extensive  
10 notes for eight years in my role as  
11 corporate counsel, assistant general  
12 counsel, and acting general counsel on  
13 notepads like the one that you're writing  
14 on, legal pads, that I left in my office  
15 when I was escorted out after my  
16 termination, and I'm sure that there's  
17 responsive information on those notepads  
18 that have not yet been produced so we'd  
19 appreciate it if you guys would --

20 Q. When you say responsive  
21 information, you mean responsive to your  
22 discovery demands of us; is that what  
23 you're saying?

24 A. Yes.

25 Q. What did you do about becoming

1 J. FISCHMAN

2 more familiar with Pharma? Did you do any  
3 due diligence in that regard with respect  
4 to Pharma?

5 A. I'm sure I did.

6 Q. Do you recall, as you sit here  
7 today, what you did?

8 A. Can you refresh my memory as to  
9 what time period you're speaking of?

10 Q. We're still in that  
11 December 2014 to April 2015. This is in  
12 preparation for you assuming the role of  
13 acting general counsel.

14 A. Yeah, I'm sure I tried to learn  
15 more about our Pharma business. I probably  
16 -- let me just say I can't recall. I  
17 actually can't recall.

18 Q. Do you have any documents that  
19 may refresh your recollection?

20 A. I don't. Do you?

21 Q. Did you do any due diligence  
22 with respect to intellectual property? Did  
23 you do reading?

24 A. I have been an intellectual  
25 property lawyer when I was in private

1 J. FISCHMAN

2 practice. I had pretty good familiarity  
3 with our intellectual property issues and  
4 from time to time, I frequently had IP  
5 issues come up that I worked with Katherine  
6 on or Joe on. So I didn't really need to  
7 do additional due diligence during that  
8 three-month timeframe.

9 Q. The last time you were at a  
10 private firm was in March of 2001, correct?

11 A. Yes.

12 Q. You were an associate, an IP  
13 and corporate associate, at Jeffer Mangels  
14 Butler & Marmaro, correct?

15 A. Yes.

16 Q. We're talking now about 2014.  
17 Did you do anything to familiarize yourself  
18 with the development of IP? Presumably it  
19 developed quite a bit in those 14 years.

20 A. I would say that through my  
21 generalist practice at Mitsubishi, I  
22 frequently had opportunity to work on  
23 intellectual property matters and when I --  
24 and I had a pretty good sense of our IP  
25 issues from working with Katherine or with

1 J. FISCHMAN

2 Joe, and but if there were specific IP  
3 litigation issues or complex IP issues,  
4 Katherine was an expert in IP and I would  
5 have deferred to her counsel.

6 Q. What businesses did you  
7 support? By December of 2014, what  
8 businesses -- affiliates I'm talking about  
9 -- what affiliates did you support, had you  
10 already worked with while working at MCHA?

11 A. We have provided the list, I  
12 believe in our answers to your  
13 interrogatories. There were about 21  
14 businesses that I supported and I'll be  
15 happy to identify them if you give me a  
16 list of all the affiliates that existed in  
17 2014. I'd be happy to check them off for  
18 you but I don't think it would be useful  
19 for you for me to try to think of 21  
20 businesses off the top of my head.

21 Q. We're going to assume that the  
22 interrogatories, because you certified  
23 them, are accurate, correct?

24 A. Yes.

25 Q. And that was the information

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J. FISCHMAN

you provided to your counsel, which then was sent to us, so we're assuming that what you set forth in the interrogatories was completely truthful.

A. To the best of my knowledge.

Q. With the affiliates that you haven't worked with, do you have an independent recollection as to the affiliates that you had not worked with by December of 2014?

A. Again, if you could give me a list of all the affiliates that existed in 2014, in the United States, I would be happy to talk about each and every one of them who I helped and didn't help at that time and what my knowledge was about them.

Q. So we're going to give you a document that's going to refresh your recollection. We can go off the record and then you can identify the affiliates that you had not worked with.

A. Okay. And this is not Bates stamped?

Q. It's a document to refresh your

1 J. FISCHMAN

2 recollection.

3 MS. COLWIN: Off the record.

4 (Whereupon, an off-the-record  
5 discussion was held.)

6 THE VIDEOGRAPHER: The time on  
7 the video monitor is 2:25 p.m. we're  
8 off the record. This ends Media 2.

9 (Whereupon, an off-the-record  
10 discussion was held.)

11 THE VIDEOGRAPHER: We are back  
12 on the record. The time on the video  
13 monitor is 2:28 p.m. This starts  
14 Media 3.

15 Q. So Ms. Fischman, I've asked  
16 which businesses had you not worked with  
17 and we provided you with a document that  
18 lists the affiliates that were in existence  
19 in 2015.

20 A. So without answering this, I  
21 don't want to be difficult in any way  
22 possible, I'm just going to tell you that  
23 some of the businesses listed on this  
24 document did not have legal services  
25 agreements with MCHA so nobody in our

1 J. FISCHMAN

2 business provided legal support to them.

3 So first I can identify those, I think, to  
4 the best of my recollection, going back six  
5 years.

6 Q. Tell us which ones.

7 A. Nippon Gohsei, and again,  
8 obviously, you know, someone else may know  
9 better. Taiyo Nippon Sanso Corporation,  
10 which was Matheson Tri-Gas. Medicago Inc.  
11 and Medicago USA under the Mitsubishi  
12 Tanabe Pharma Corporation.

13 Q. Anything else?

14 A. Those were the two that I  
15 identified. Soarus, S-O-A-R-U-S. Okay.

16 Q. Are there affiliates where MCHA  
17 was providing legal services in that  
18 timeframe? We're talking about 2014 and  
19 2015 that you were unfamiliar with on this  
20 list.

21 A. Going the through list, I can't  
22 remember who MC Ionic solutions was, so  
23 I'll say that one. I'd also like to point  
24 out that some of these were paper  
25 companies, in that they were not operating

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2 companies. I believe Japan Poly Chem  
3 America was one such paper company as was  
4 Japan Polypropylene Corp. was one such  
5 paper company. Under Verbatim was one  
6 company that I did not support at this  
7 time, and was completely unfamiliar with  
8 them, at this point in time, 2014, 2015,  
9 and I believe some of the companies listed  
10 under Verbatim Corporation are also paper  
11 companies.

12 Q. So are you talking about Data  
13 Life?

14 A. Data Life, Kasei Memory and  
15 Verbatim Limited but they also may be  
16 foreign companies that are wholly owned by  
17 Verbatim Corp as they indicate in the  
18 document. So to answer your question, as I  
19 look at this list, in my tenure at  
20 Mitsubishi Chemical Holdings, I worked at  
21 nearly every -- I worked for or had  
22 familiarity with nearly every single  
23 company on this list with the exception of  
24 the Verbatim companies and the Tanabe  
25 Pharma companies.

1 J. FISCHMAN

2 Q. Of the affiliates that you had  
3 not worked, what did you do to become  
4 familiar with the companies?

5 A. During that period of time, I  
6 think I met with Donna and she gave me  
7 their background and I'm sure that I looked  
8 them up on the web. I'm sure that I tried  
9 to understand what was their product, but  
10 at time, for example, especially with  
11 Mitsubishi Tanabe Pharma America, they  
12 didn't have a product that had been  
13 approved by the FDA.

14 So they were more about forming  
15 the company at that time is my  
16 recollection, putting in the appropriate  
17 people in place because they were going to  
18 be bringing a new drug to treat Lou  
19 Gehrig's Disease. They were going to be  
20 bring a new drug to the US around 2015, the  
21 middle of 2015, and beyond.

22 Q. Okay. You had described the  
23 coaching and the meetings that you had with  
24 Ms. Costa as a data dump, so describe for  
25 us the meetings. You've already said that

1 J. FISCHMAN

2 you met at least once a week and it was an  
3 extensive meeting with Ms. Costa where you  
4 took a lot of notes. Describe those  
5 meetings.

6 A. We would sit down and she  
7 explained maybe what she was working on for  
8 one of those companies, for one of these  
9 companies. She may have been privy to, for  
10 example, with Mitsubishi Kagaku Imaging  
11 Corp, it was about this time period that  
12 they started talking about doing a major  
13 reduction in force, so we probably had a  
14 long conversation about MKIC and that what  
15 the timeframe was that they were going to  
16 be reducing in force.

17 We probably talked about the  
18 land lease in Virginia where they occupied  
19 space. We probably talked about the lease  
20 in California where they occupied space.  
21 We probably talked about their management  
22 team, how they were going reduce it, or  
23 what their plans for the future were just  
24 as an example of the kind of things and the  
25 kind of business things that we would talk

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2 about, because Donna, being on the board of  
3 so many of these businesses, would know  
4 information about the businesses that  
5 employees may not know. So this was an  
6 example of one of the things we talked  
7 about.

8 I think we would have gone  
9 through each and every business and talked  
10 about each and every business, and so there  
11 would be meetings where we would talk about  
12 management and budget. So she presented me  
13 with the budget for the legal department  
14 but explained how the budgetary, how  
15 everything worked and where the money came  
16 from. She explained, she would explain all  
17 of that, and I don't know if you want to  
18 get into that right now.

19 We, yeah, I mean we talked  
20 about every single affiliate business. We  
21 talked about staffing in the department,  
22 which was a little bit disappointing to me  
23 because, although I was excited to be  
24 hiring someone new, the person who was  
25 going to replace me was, because of

1 J. FISCHMAN

2 budgetary constraints, going to have be a  
3 new junior attorney who had never, you  
4 know, a very junior attorney.

5 And that meant that I would  
6 continue to have responsibility for all the  
7 businesses that I had, with the exception  
8 of a few, and that I would be training  
9 Steven on, or the candidate on, but that I  
10 would still maintain primary business  
11 responsibility for so many companies in  
12 addition to taking on this role of the  
13 leader of the department.

14 Q. And when you mention Steve,  
15 that's Steven Rose, correct?

16 A. Yes, Steven Rose.

17 Q. And that was the individual  
18 that you hired as acting general counsel,  
19 correct?

20 A. Yes, I don't know what his date  
21 of hire was.

22 Q. Date of hire is May 13, 2015,  
23 does that refresh your recollection?

24 A. Yes.

25 Q. Anything else, in terms of

1 J. FISCHMAN

2 training and coaching, that Donna provided  
3 you other than what you've testified?

4 A. We talked about the interaction  
5 with Japan. She said that Japan didn't  
6 want to deal with me. That the only thing  
7 that I would be interacting with them would  
8 be on a quarterly basis and that I could  
9 work out with Sakaguchi-san how he wanted  
10 me to report on important matters, whether  
11 it was going to be monthly or whether it  
12 was going to be quarterly, but that I would  
13 not have direct contact with the leadership  
14 in Japan as she, Donna, had and then we  
15 also talked about the fact that I would not  
16 be going to Japan until much later in the  
17 year.

18 Q. When you say the interaction  
19 with Japan, I know we've made this  
20 distinction in the past. I just want to  
21 make sure that the record is clear.

22 A. I'm sorry. When we talk in the  
23 office, our lexicon is to identify -- we  
24 would say have you spoken to Japan? We're  
25 talking about employees at the Japanese

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2 parent company, MCHC, or the strongest  
3 affiliate company, MCC, which is the  
4 primary revenue for the company. It's the  
5 largest of all of the product companies,  
6 which was Mitsubishi Chemical Corp and  
7 Mitsubishi Chemical Holdings Corp is a  
8 small office of administrative people who  
9 are in a holding company but the primary  
10 work is done at the business level,  
11 Mitsubishi Chemical Corp.

12 Q. Ms. Fischman, I want to focus  
13 on testimony you just gave moments ago  
14 where you had testified that Ms. Costa had  
15 said to you that Japan didn't want to deal  
16 with you.

17 A. Yes.

18 Q. And so describe when that  
19 conversation took place, what you said to  
20 her and what she said to you to the best of  
21 your recollection.

22 A. That took place very early on  
23 in one of our first meetings I think.

24 Q. First meetings in  
25 December 2014, or you're talking about

1 J. FISCHMAN

2 after you became acting general counsel in  
3 April 2015?

4 A. No, during the transition,  
5 absolutely during the transition.

6 Q. When do you believe that  
7 conversation took place?

8 A. In either December 2014 or  
9 January 2015.

10 Q. Who was present?

11 A. No one was ever present in any  
12 of our meetings other than Donna and I,  
13 Donna and me.

14 Q. So what is it that you said to  
15 her and Ms. Costa said to you to the best  
16 of your recollection?

17 A. This was in the context of a  
18 conversation of the reporting structure and  
19 who I would be in contact with in Japan and  
20 whether or not I would be reporting  
21 directly as she had and meeting with and  
22 traveling to Japan twice a year, as she  
23 had, and meeting with high level executives  
24 at Mitsubishi Chemical Holdings Corp and as  
25 well as MCC and in that context, she said

1 J. FISCHMAN

2 no, you will not be. You will not be  
3 meeting with them. I will continue to be  
4 their primary contact; you will not. They  
5 don't want to deal with you.

6 Q. When she said they don't want  
7 to deal with you, according to your  
8 testimony, did Ms. Costa ever identify who  
9 they were were?

10 A. No.

11 Q. Did you ever press her for more  
12 information?

13 A. No, I didn't.

14 Q. Did you ever ask who these  
15 individuals were?

16 A. No, I assumed it was Ken  
17 Fujiwara, Sakaguchi, to some extent  
18 Takimoto, because he and she were very  
19 close, they had a close relationship, and  
20 that wasn't going to change by me being in  
21 this role even though he was a primary  
22 client and important businessperson to our  
23 business.

24 Q. But as you said these were your  
25 assumptions, correct, you never got the

1 J. FISCHMAN

2 identities of the individuals, as you've  
3 testified, that Ms. Costa made this  
4 comments to you, correct?

5 A. No.

6 Q. We've already established on  
7 the record that Ms. Costa made this comment  
8 to you. Was there ever an explanation?

9 A. No.

10 Q. Now towards the end of  
11 transition period, that would be in March  
12 of 2015, Ms. Costa had wanted to talk to  
13 you about other areas that she wanted to  
14 focus on, she wanted you to focus on, in  
15 order for the full transition to acting  
16 general counsel to take place. Do you  
17 remember a conversation you had with her in  
18 March of 2015 when the two of you were  
19 speaking about taking on the role formally,  
20 beginning April 1, 2015, in which she said  
21 she wanted you to concentrate on other  
22 areas?

23 A. No, I have no recollection of  
24 that as you've describe it.

25 Q. Do you recall that when she had

1 J. FISCHMAN

2 this conversation with you about you taking  
3 on this acting role in April 1st, 2015, and  
4 wanting to give you more feedback as to  
5 what she wanted you to focus on, you had  
6 asked her not to talk anymore about the  
7 transition but to give you some space so  
8 that you could grow into the role?

9 A. Never.

10 Q. You never said that?

11 A. Not like that certainly.

12 Q. What do you recall?

13 A. I don't recall ever telling  
14 Donna anything like that. I remember  
15 always being receptive to feedback because  
16 I wanted this job, so I recall asking for  
17 guidance on the goals that I put in my 2015  
18 performance review, the goals for 2015. I  
19 remember asking for guidance on that and  
20 being told to seek it from Pat Saunders. I  
21 remember providing that list of goals to  
22 Donna and her having no time to talk to me  
23 about it and so never really having any  
24 interest in whether I met those goals or  
25 not. We never talked about them again so

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2 no, I don't recall ever saying I don't want  
3 feedback.

4 Q. I just want to make sure that  
5 the record is clear. The goals that you  
6 are referring to are the ones that are  
7 Bates stamped 64 to 76, correct?

8 A. No. The goals are --

9 Q. But it's within this document?

10 A. The goals are 69 through 76  
11 Bates stamped.

12 Q. Is it your testimony that  
13 Ms. Costa had not provided you with any  
14 training or coaching on any of the goals  
15 that you set forth in this document, 70 to  
16 76?

17 A. No, that's not my testimony.

18 Q. You said that was not your  
19 testimony?

20 A. No, that's not my testimony.

21 Q. So the record stands for itself  
22 but I will give you the opportunity to --  
23 I've asked you a question. What is it  
24 about the question that I posed to you that  
25 is inaccurate?

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A. I'm sorry, I don't remember the question.

Q. Is it your testimony that Ms. Costa did not provide any training or guidance with respect to the goals that you provided to her as set forth in the documents 70 to 76 Bates stamped?

A. It is my recollection that she and I never talked about Bates stamped 69 to 76 ever, and, I'm sorry, let me be clear, Bates stamped 70 to 76, that she and I never reviewed these together, that she asked me to develop these with Pat Saunders, which I did. I provided them to Donna and she did not do anything but sign them and return them to me as indicated in some e-mail, I put it on your desk or something.

Q. I just want to make sure that it's clear. In sum and substance, the areas that you've identified in that document, and we're all in 70 to 76, we haven't moved from this document. Is it your testimony that Donna did not provide

1 J. FISCHMAN

2 training and coaching in those areas?

3 A. I think you need to be more  
4 specific please.

5 Q. It's probably easier to tell us  
6 affirmatively what areas, the substantive  
7 areas that are defined in the goals that  
8 set forth in 70 to 76 which Ms. Costa  
9 provided training and guidance on.

10 A. I think as I previously  
11 mentioned, I never discussed any of these  
12 goals with Donna at any time so to the  
13 extent she provided me any guidance or did  
14 you call it coaching, I'm sure she did. I  
15 certainly, over my tenure at eight years at  
16 Mitsubishi, she did but I will say that  
17 during this period of what you're asking,  
18 from the time that this was submitted, I  
19 don't recall any particular coaching as to  
20 these goals.

21 Having said that, she wrote an  
22 e-mail in July to me about a transaction we  
23 were working where I was for the first time  
24 helping the team choose a financial advisor  
25 for a Brazilian deal and she wrote me very

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2 constructive feedback that I thought was  
3 very useful and that was, I would say, my  
4 recollection during this period the only  
5 time that she provided any feedback that I  
6 can recall.

7 Q. Is there any document that  
8 would refresh your recollection as to other  
9 substantive areas that Ms. Costa gave  
10 constructive criticism training or  
11 coaching?

12 A. If you have a document of such,  
13 it would certainly help, but I can't think  
14 of anything off the top of my head.

15 Q. I just have a document Bates  
16 stamped DEF 13 to 15. I'm going to ask you  
17 to begin with 15 and then go up to 14. So  
18 Ms. Fischman, taking a look, this is an  
19 e-mail exchange between Ms. Costa and  
20 Ms. Saunders, and Ms. Saunders you've  
21 identified; she was the head of HR at MCHA,  
22 correct?

23 A. Yes, thank you, yes, she was.

24 Q. So do you see in the second  
25 paragraph in 15 it says "just want to let

1 J. FISCHMAN

2 you know that when I was catching up with  
3 Jennifer she made another reference to  
4 being acting, so I took the opening to say  
5 on that point now that our transition  
6 period is over, I would like to speak to  
7 you about what was behind that decision.  
8 She immediately got teary and said I would  
9 like to wait until the end of April to have  
10 that discussion. I told her that was  
11 absolutely fine with me and we moved on to  
12 other topics." Do you recall that?

13 A. I don't recall the teary eyed  
14 part but I recall asking again to be  
15 elevated to the full role because it was  
16 undermining my credibility with clients,  
17 and I also recall being made fun of at a  
18 meeting with the president of Taiyo Nippon  
19 Matheson Tri-Gas, where he made fun of me  
20 being an acting general counsel and said  
21 "are we all acting here" or something to  
22 that effect and it was very embarrassing  
23 and humiliating, so I think I did ask her  
24 about that.

25 Q. When did that exchange take

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2 place?

3 A. It might have been a little  
4 later but I frequently asked to be elevated  
5 to get rid of the "acting" word.

6 Q. Do you recall this exchange in  
7 which Ms. Costa had offered to explain why  
8 you were in acting role and the response  
9 was that you didn't want to speak about it  
10 at that time?

11 A. I don't recall the specific  
12 conversation but I note that Pat is already  
13 preparing for any action that might need to  
14 take down the road when it doesn't work  
15 out. So it seems like the two of them had  
16 been talking about my failure or my  
17 perceived failure before I even took the  
18 job.

19 Q. Ms. Fischman, I want to correct  
20 you right now. That's not what -- let me  
21 make sure that the record is clear. That's  
22 not what Ms. Saunders says. She says this  
23 is important if this doesn't work out. Not  
24 that it was not going to work out.

25 A. Well, also supports any action

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2 you may need to take down the road if this  
3 doesn't work out so --

4 Q. That doesn't presuppose that  
5 it's going to be that you're going to fail,  
6 correct?

7 MR. BERMAN: Object to form.

8 A. I read it differently than you  
9 do.

10 Q. The document stands for itself,  
11 does it not?

12 MR. BERMAN: Object to form.

13 A. No, I don't think the document  
14 stands for itself. I think that there was  
15 an intention behind the document and what  
16 she said.

17 Q. But the verbiage is what is set  
18 forth in this document, the words itself,  
19 whether there is an intent or meaning  
20 that's different story. The document  
21 stands for itself means, as you know, that  
22 the words that are on the page are what  
23 they are, correct?

24 A. Correct.

25 Q. Do you have any reason to

1 J. FISCHMAN

2 dispute the statements that Ms. Costa put  
3 forth in page 15 that you had rejected  
4 being told the underlying reasons for not  
5 receiving the general counsel position?

6 A. I have no recollection of this  
7 conversation so I can't opine on whether or  
8 not this really took place and, in fact, I  
9 can't say. When Ms. Costa, she can  
10 authenticate this, but I can't.

11 Q. Do you have any document in  
12 your possession and control that would  
13 refresh your recollection as whether or not  
14 this exchange between you Ms. Costa took  
15 place?

16 A. I do not.

17 Q. What were the differences? Now  
18 you've held three positions, or held three  
19 positions at MCHA, Corporate counsel,  
20 acting general counsel, and assistant  
21 general counsel. What were the differences  
22 between acting general counsel and  
23 assistant general counsel?

24 A. Well, you've provided me a  
25 description of the profiles of these roles,

1 J. FISCHMAN

2 so I'd be happy to read off what the  
3 differences are.

4 Q. Let me just, I can short  
5 circuit that.

6 A. Okay.

7 Q. Were the duties and  
8 responsibilities set forth in that  
9 document, in the document that you're  
10 reading, or the description for the duties  
11 and responsibilities for all three  
12 positions, Bates stamps 817 to 822,  
13 accurate? We've already established that  
14 the general counsel one is, what about the  
15 other two?

16 A. I actually, in looking at this,  
17 would like to know what the origin of this  
18 document is and the date that it was  
19 created because as I mentioned, I don't  
20 recall ever seeing this document, certainly  
21 not for the general counsel position or the  
22 assistant general counsel position. So if  
23 you have something that can authenticate  
24 when that was actually created, that would  
25 be helpful to me.

1 J. FISCHMAN

2 Q. Looking at the substance of the  
3 documents, we're just going to look at the  
4 substance.

5 A. Okay.

6 Q. Are the duties and  
7 responsibilities set forth in those  
8 documents, that I've already said were 817  
9 to 822, are they accurate? We've already  
10 established that the general counsel  
11 position and CCO position, as described in  
12 the document you have in your hand, is  
13 accurate. I'm now asking about the other  
14 two positions. Is that an accurate  
15 depiction of the duties and  
16 responsibilities of those positions as you  
17 held them?

18 A. I think that they are a good  
19 overview of the duties and responsibilities  
20 of the roles.

21 Q. In paragraph 30 of your  
22 complaint, if you could just take a look at  
23 that. You state that the GC is in charge  
24 with assigning and delegating to each of  
25 the lawyers, operating as an assistant

1 J. FISCHMAN

2 general counsel, and to supervise the work  
3 performed by those legal personnel and  
4 their subordinates. Do you see that?

5 A. Aha.

6 Q. It's important, then, the  
7 lawyers that are below and report to the  
8 general counsel at MCHA tell them, tell the  
9 general counsel, the work that they're  
10 working on; isn't that right?

11 A. Yes, sometimes.

12 Q. How is that possible? Why the  
13 qualifier? If you as the general counsel  
14 are responsible for the attorneys that  
15 report to you, would you be comfortable  
16 having lawyers that report to you not tell  
17 you the work they're working on?

18 A. Sure.

19 Q. Under what circumstances?

20 A. Well first of all, I would  
21 trust that my assistant general counsel has  
22 attained significant knowledge and  
23 experience dealing with all of the  
24 affiliated companies and that if you look  
25 at how many affiliates there are, it's not

1 J. FISCHMAN

2 like there's just one business that you  
3 support.

4 You support, or at least in my  
5 experience, I supported more than 20 of  
6 these businesses and that I, or any  
7 assistant general counsel, or corporate  
8 counsel, would have a variety of work that  
9 they work on that they may not have had an  
10 opportunity to pass it by the general  
11 counsel because there are actually only so  
12 many hours in the day, and the access to  
13 the general counsel isn't always  
14 uninterrupted and available.

15 I know that when I was  
16 assistant general counsel, reporting  
17 directly to the general counsel Donna or  
18 even later to Nick, there was many times  
19 where they were out of the office meeting  
20 other businesses, travelling. We  
21 communicated a great deal, but there is  
22 simply too many matters that each person is  
23 responsible for you to have a handle on  
24 every single matter that they work on.  
25 Having said that, I would think that most

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2 of the major matters you would expect some  
3 basic knowledge of what was going on.

4 Q. And you would expect, too, that  
5 those attorneys who were reporting to the  
6 general counsel, that they would make the  
7 general counsel aware of those matters,  
8 correct?

9 A. Like I said, on the major  
10 matters, especially litigation, you would  
11 make sure that the general is kept informed  
12 certainly on IP, and certainly on the  
13 environmental litigation that I managed for  
14 many years, on the HIV litigation I managed  
15 for many years; I certainly had multiple  
16 conversations with Donna.

17 Q. I'm going to refer to your  
18 complaint for a moment. In your complaint,  
19 paragraph 60, you allege that you were  
20 excluded from all meaningful interactions  
21 with the company's Japanese leadership  
22 including Ken Fujiwara, Masanori Sakaguchi,  
23 and not permitted to interact with any  
24 senior level Mitsubishi personnel situated  
25 in Japan including MCHC executives Ken

1 J. FISCHMAN

2 Fujiwara and Hidefumi Date. Correct?

3 A. Which paragraph?

4 Q. That's paragraph 60.

5 A. Yeah.

6 Q. I'm going to ask you to take a  
7 look at paragraph 60, 65; which we  
8 discussed moments ago in substance.

9 A. Yes.

10 Q. But isn't it true that you  
11 actually did communicate directly with Mr.  
12 Fujiwara and Mr. Sakaguchi despite what you  
13 have alleged, Ms. Costa allegedly  
14 prohibited you from doing so?

15 A. No, not in a meaningful way.

16 Q. Let's take a look at  
17 Defendant's 1217. This is Bates stamped  
18 1217. This is an e-mail communication  
19 between Mr. Sakaguchi and yourself in March  
20 of 2018; is that right?

21 A. Yes.

22 Q. And in the top of that  
23 document, Mr. Sakaguchi states that he's  
24 very anxious in my new assignment, I'm  
25 anxious to work and collaborate with you

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and your colleagues so as to be in the best interest of MCHA's group company. Do you see that?

A. I do.

Q. That's a truthful statement by Mr. Sakaguchi, correct?

A. I really can't answer whether that's a truthful statement. Their words are on the page.

Q. Do you have any actual factual reason to dispute the statement that Mr. Sakaguchi states in this document?

MR. BERMAN: Object to form.

A. Other than the conversation I had with Donna Costa in December of 2014 that I was not going to be interacting with the Japanese colleagues at MCHC or otherwise, this seems like a kind and warm fluff statement just in response to my kind and warm, you know, congratulations. It's just like a nice response.

Q. He ends the paragraph by saying I'm planing to travel to New York in the week of April 20 and I hope to see you

1 J. FISCHMAN

2 then. He saw you then, didn't he?

3 A. I think -- I don't actually  
4 know when I saw him.

5 Q. But you saw him on one of the  
6 trips to the United States; isn't that  
7 right?

8 A. I really couldn't say when that  
9 was. I don't know.

10 Q. But your answer affirmatively  
11 states that you actually did meet Mr.  
12 Sakaguchi when he was in the United States,  
13 correct?

14 A. Do you have documentation that  
15 shows that I met with him on --

16 MS. COLWIN: Can you read back  
17 her statement please?

18 (Whereupon, the referred to  
19 answer was read back by the  
20 Reporter.)

21 Q. So the answer to my question is  
22 that there was an occasion when you saw  
23 Mr. Sakaguchi.

24 A. Yes, but I don't know when that  
25 was and whether I was in this role or not.

1 J. FISCHMAN

2 I don't have any recollection of the dates  
3 of Mr. Sakaguchi coming to the United  
4 States and I actually feel like I read  
5 someplace that this trip was canceled, so I  
6 don't recall, but I'm open to hearing  
7 differently if you have evidence that I  
8 can't recall.

9 Q. Take a look at Exhibit 2018.  
10 This is another direct communication you  
11 had with Mr. Sakaguchi, correct?

12 A. This is -- okay. This is a  
13 communication I had with Sakaguchi-san as  
14 assistant general counsel, not as acting  
15 general counsel, and I was already demoted  
16 at that time and Nick was in charge.

17 Q. That's not my question. I see  
18 the date.

19 A. But you asked earlier. Go  
20 ahead, Mercedes, I'm sorry. Go ahead.

21 Q. So Mr. Sakaguchi tried to  
22 cultivate a professional relationship with  
23 you, did he not?

24 A. No, he did not.

25 Q. What's your factual basis for

1 J. FISCHMAN

2 that statement that he did want to  
3 cultivate a professional relationship with  
4 you?

5 A. I didn't have a professional  
6 working relationship with him other than  
7 sending him a report maybe once a month and  
8 if I did, again, I have no recollection of  
9 it. If you have some support for my good  
10 relationship with him, I'm absolutely open  
11 to hear about it.

12 Q. You felt comfortable enough, in  
13 this direct communication with Mr.  
14 Sakaguchi, to call attention to the way you  
15 perceived his communication to you,  
16 correct? In this statement, you write  
17 "this is what I gave you. Please do not  
18 continue to condemn my legal advice in such  
19 a public manner. It is unprofessional and  
20 nasty."

21 A. I can't really -- you don't  
22 have the e-mail interaction that this is  
23 responding to, so if you want to give me  
24 that I'd be happy to then talk about it.

25 Q. Sure, we'll get it for you.

1 J. FISCHMAN

2 Then we'll return to this document.

3 A. Okay. Are we ready for a bio  
4 break?

5 Q. Sure. No problem.

6 THE VIDEOGRAPHER: The time on  
7 the video monitor is 3:14 p.m. We  
8 are off the record.

9 (Whereupon, a short recess was  
10 taken.)

11 THE VIDEOGRAPHER: We are back  
12 on the record. The time on the video  
13 monitor is 3:33 p.m., this starts  
14 Media 4.

15 Q. Ms. Fischman, we are showing  
16 you what's been Bates stamped 1218 and  
17 1219. That is the complete exchange  
18 between yourself and Mr. Sakaguchi. Does  
19 that help you put into context the exchange  
20 between yourself and Mr. Sakaguchi?

21 A. No, because it doesn't have the  
22 e-mail that I sent to him originally, so if  
23 you have that e-mail, that would be even  
24 more helpful to put this in context.

25 Q. Look at the last line of 1218.

1 J. FISCHMAN

2 Where you say "please do not continue to  
3 condemn my legal advice in such a public  
4 manner. It is unprofessional and nasty."  
5 You would agree with me that that is a  
6 pretty aggressive way of communicating,  
7 would you not?

8 A. Yes.

9 Q. When you had been elevated to  
10 acting general counsel, you were a member  
11 of MCHA's leadership team, were you not?

12 A. Yes.

13 Q. And that leadership team was  
14 led by Ms. Costa, correct?

15 A. Yes.

16 Q. And at the time that you were  
17 elevated, you had Ms. Costa as president,  
18 yourself as assistant general counsel,  
19 Ms. Patricia Saunders, who we've already  
20 identified as director of HR, Ms. Yoko  
21 Katayama, who is the head of expat  
22 services; Mr. Jeff Kuropatkin, who is the  
23 VP of tax; Mr. Brian Conners, director of  
24 internal audit; Mr. Harry Fukasawa who is  
25 the director of IT and Mr. Shin Iguchi, who

1 J. FISCHMAN  
2 is the director of finance and accounting.  
3 Correct?

4 A. As far as I can recall, yes.

5 Q. So that would be, looking at  
6 the breakdown, that there were four women  
7 and four men; is that right?

8 A. You have it in front of you.

9 Q. So 50 percent of the MCHA  
10 leadership team were women, were they not?

11 A. 50 percent of the people who  
12 attended Donna's monthly or bimonthly  
13 meetings appear to be women.

14 MS. COLWIN: I'm going to  
15 strike that as unresponsive.

16 Q. My question is 50 percent of  
17 the MCHA leadership team were women, were  
18 they not?

19 A. I think that the leaders were  
20 people of director and above. So I'm going  
21 to say that three of the women were  
22 leaders, yes.

23 Q. Who did you believe was not a  
24 leader amongst the list that I just gave  
25 you?

1 J. FISCHMAN

2 A. Yoko. She was a low level  
3 person in the human resources department  
4 responsible for making sure that all the  
5 Japanese expats that come to the United  
6 States -- you know, she handled their  
7 visas, she made sure that they had, you  
8 know, handled those kinds of things. She  
9 was an administrative person as far as I  
10 understood.

11 Q. Is there any evidence of gender  
12 discrimination on the MCHA leadership team?

13 A. No.

14 Q. We have already established  
15 that you reviewed documents that were  
16 exchanged in this litigation. Were you  
17 aware that Ms. Costa had informed, after  
18 she was informed of her promotion to  
19 president of MCHA, she had discussed her  
20 plans to hire and recruit a general counsel  
21 from outside MCHA?

22 A. No.

23 Q. Were you aware of that?

24 A. No.

25 Q. Were you aware that in those

1 J. FISCHMAN

2 conversations, she believed that the most  
3 qualified candidate in the legal department  
4 -- were you aware that Ms. Costa informed  
5 the president of MCHA that you were the  
6 most qualified candidate in the legal  
7 department but she preferred that MCHA hire  
8 a general counsel from outside MCHA due to  
9 your lack of experience at the time?

10 A. What's the question?

11 Q. Were you aware that Ms. Costa  
12 informed the president of MCHA that you  
13 were the most qualified candidate in the  
14 legal department but she preferred to hire  
15 a general counsel from outside MCHA due to  
16 your lack of experience at the time?

17 A. I am unaware of that.

18 Q. Were you aware that MCHC, which  
19 is MCHA's parent company, as we've already  
20 identified on the record, preferred that  
21 MCHA promote you rather than hire someone  
22 from outside the company due to cost and a  
23 cultural preference to promote from within?

24 A. I'm unaware of that.

25 Q. I'm showing you what's been

1 J. FISCHMAN

2 marked as 347 to 350. I'm going to call  
3 your attention to page Bates stamped 347.  
4 Do you see the beginning of the second  
5 paragraph, it says the reason those of us  
6 in Japan have not agreed to the idea of  
7 hiring new GC after your taking the  
8 president's position was because of the  
9 anticipated increase in the cost at the  
10 legal department or MCHA.

11 A. Yes.

12 Q. You have no reason to doubt  
13 that statement as anything other than  
14 accurate, correct?

15 A. This is a statement made nearly  
16 a year after the decision was made, so  
17 there may have been other influences that  
18 are not included in this sentence that may  
19 have influenced the decision. So I will  
20 say that the sentence is there and I have  
21 no reason to doubt that this sentence is  
22 true, but I also think that it's not the  
23 full story.

24 Q. What evidence do you have, what  
25 documentary evidence do you have, to

1 J. FISCHMAN

2 dispute that being anything other than  
3 accurate?

4 A. Well, I didn't dispute that it  
5 was accurate. All I said was that it  
6 wasn't the full story of what was going in  
7 Japan in 2014 for which there's no  
8 documentary evidence of any discussion of  
9 who the GC would be.

10 Q. What's your factual basis for  
11 your belief that something was going on at  
12 that time? What's the basis of your  
13 belief?

14 A. The basis for my belief is that  
15 I was well qualified for the position. I  
16 had been in the company for eight years. I  
17 was supporting three quarters of the  
18 business units at the time. I had ample  
19 experience and I was not promoted to the  
20 general counsel position. That's the  
21 factual basis for my position.

22 Q. I just want to make sure that  
23 the record is clear. This statement which  
24 is set forth in this document, 347, is very  
25 simple. Ms. Costa wanted to hire outside

1 J. FISCHMAN

2 of MCHA. She did want to promote within  
3 MCHA. Management in Japan states that  
4 here, like Ken Fujiwara, said the reason  
5 for that is because of expense and having  
6 said that, you have no documentary evidence  
7 of anything that disputes that as being  
8 untrue.

9 A. I don't have any documentary  
10 evidence but I do note that Ken Fujiwara  
11 was in charge of the decision, as was  
12 Date-san, as indicated in this document,  
13 that his department was primarily  
14 responsible for the management of MCHA. It  
15 also states in this document that I don't  
16 think --

17 MS. COLWIN: Ms. Fischman,  
18 there's no question pending. Move to  
19 strike.

20 A. Okay, but it's hard to, you  
21 know, keep the context of the document.

22 Q. The document speaks for itself.  
23 We've established that a few times on the  
24 record so you'll be able to use the  
25 document.

1 J. FISCHMAN

2 A. Okay. Sorry, Mercedes.

3 Q. No worries. You've already  
4 described the training that you received  
5 from Donna and I just want to ask a few  
6 other questions. Didn't Donna speak to you  
7 about pertinent laws?

8 A. I'm sorry?

9 Q. Didn't Donna talk to you about  
10 pertinent laws that you may be facing as  
11 acting general counsel? During her  
12 training and coaching, didn't she talk to  
13 you about certain laws?

14 A. Can you be more specific  
15 please? What laws?

16 Q. What laws do you recall that  
17 she talked to you about, if any? If you  
18 don't recall then we'll move on.

19 A. I'm sorry, I don't recall.

20 Q. Is there a document that would  
21 refresh your recollection as to what laws  
22 she may have spoken to you about during  
23 your training and coaching?

24 A. If you have an outline or a  
25 record of what she talked about that would

1 J. FISCHMAN

2 certainly help.

3 Q. Do you have a recollection of  
4 the programs that Ms. Costa talked to you  
5 about?

6 A. What kind of programs? I don't  
7 understand your question.

8 Q. I'm going to rephrase that.  
9 Didn't Ms. Costa also speak to you about  
10 working on your emotional intelligence?

11 A. I recall that in the timeframe  
12 of 2015, emotional intelligence was a topic  
13 in a lot of business magazines and maybe  
14 even on like the cover of Time Magazine and  
15 it was one of those sort of trendier topics  
16 to talk about in management, so yeah, I'm  
17 sure we talked about emotional intelligence  
18 at some point in time.

19 Q. Didn't she also talk to you  
20 about cultural awareness?

21 A. Yes, we had talked about  
22 cultural awareness in 2008, 2009, 2010,  
23 sure. One of the things I think she said  
24 earlier in one of my performance reviews  
25 was that I had good culture awareness.

1 J. FISCHMAN

2 That's why I was invited to go, pretty  
3 early on, with her on a trip to Japan, so  
4 yeah.

5 Q. Didn't she ask you to work on  
6 your tone in communications?

7 A. Not that I recall.

8 Q. Didn't she ask you to focus on  
9 how you communicate and have the cultural  
10 awareness when you are providing  
11 communication to individuals outside of  
12 MCHA?

13 A. Not that I recall.

14 Q. Didn't she say to you, on  
15 various occasions, in your training and  
16 coaching, that she wanted you to develop  
17 relationships to do business within the  
18 affiliates of MCHC and to focus on how to  
19 use your tone and take care of the unsaid,  
20 "reading the air" quote on quote?

21 A. No, never.

22 Q. She never said that to you?

23 A. Never.

24 Q. In your role as acting general  
25 counsel, Ms. Costa provided quite a bit of

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feedback to improve your performance; isn't that right?

A. No.

Q. She never gave you feedback on how to improve your performance?

A. I can't recall anytime that she actually did between April 1st and that one e-mail that I told you about in July. I actually don't recall any other time.

Q. Okay. In the training and coaching that Ms. Costa provided to you, which we have ample testimony from you on the record, there is no evidence of discrimination by her?

MR. BERMAN: Object to form.

A. I think the whole choice of me becoming acting was, in and of itself, a discriminatory action, so yes.

Q. So do you believe that the training and coaching and investment that Ms. Costa gave to you, to make sure that you were successful as the acting general counsel, leading up to being promoted to general counsel, was pretext for

1 J. FISCHMAN

2 discrimination?

3 MR. BERMAN: Object to form.

4 A. I don't understand your  
5 question.

6 Q. What is it that you don't  
7 understand and I'll rephrase it for you?

8 A. Can you just rephrase it? It's  
9 a lot of compound questions.

10 Q. It wasn't compound. Is it your  
11 testimony that the time and energy and  
12 commitment that Ms. Costa devoted to you,  
13 during your due diligence period leading up  
14 to being promoted to acting general  
15 counsel, and after you were promoted to  
16 acting general counsel, in her training and  
17 coaching, was somehow discriminatory?

18 A. First of all, we haven't  
19 established -- you've made it seem like  
20 this extensive, I mean, training and  
21 coaching. I explained it as a data dump  
22 where she told me everything she was  
23 working on. I do not have a specific  
24 recollection of quote "training and  
25 coaching" that you've referred to so I

1 J. FISCHMAN

2 really -- that's my answer, sorry.

3 Q. Okay. I'll let the record  
4 speak for itself. We don't have to go back  
5 there. I'd ask that you take a look at  
6 1179 and 1180. 1179 and 1180, do you have  
7 document in front of you?

8 A. I do. I have the e-mail in  
9 front of me. I don't have the document  
10 that it refers to in front of me.

11 Q. Well, I'm referring to the  
12 Bates stamped two-page document that I've  
13 had Brittany just hand to you. So it's an  
14 e-mail exchange between yourself and  
15 Ms. Costa, correct?

16 A. Yes.

17 Q. And in it you're asking Ms.  
18 Costa to give you feedback on a report  
19 titled MCHA Compliance Report, correct?

20 A. Yes.

21 Q. And you ask Ms. Costa to review  
22 the attached before you send it to out to a  
23 larger group; isn't that right?

24 A. That is correct.

25 Q. Why were you seeking her input?

1 J. FISCHMAN

2 A. I believe this was the first  
3 compliance report that I would be sending  
4 in my role as acting general counsel, and  
5 so I wanted to make sure that the format  
6 was what she had used or thought was a good  
7 format. Again it was the first time I was  
8 sending out a compliance report, Q1, so I  
9 was seeking her input because she had been  
10 the one responsible for sending it out  
11 beforehand. It was probably because it was  
12 also the first nonlegal report that I would  
13 be providing.

14 Q. And you trusted that Ms. Costa  
15 would give you the appropriate counsel on  
16 how to modify the report if necessary,  
17 correct?

18 A. I asked her to take a look at  
19 it.

20 Q. That's not the question. You  
21 trusted that Ms. Costa would give you the  
22 appropriate advice when looking at this  
23 document, correct?

24 A. I'm not sure what you mean by  
25 appropriate advice. I trusted that if she

1 J. FISCHMAN

2 reviewed it first it would comport with her  
3 expectations.

4 Q. And you trusted that if any  
5 modifications were necessary, that she  
6 would give you the right advice on how to  
7 modify it, correct?

8 A. Yes, so that it would comport  
9 with her expectations.

10 Q. 1182. This is during the  
11 period of the training, coaching and  
12 counsel that we have on the record prior to  
13 you ascending into the acting general  
14 counsel role. It's an e-mail exchange  
15 between yourself and Ms. Costa, correct?

16 A. Mmhmm.

17 Q. Is that a yes?

18 A. I'm so sorry. Yes.

19 Q. And in it, you were providing  
20 your CV; isn't that right?

21 A. Yes.

22 Q. And you were also providing  
23 language for it to be used in the document  
24 that shows that you were being elevated to  
25 acting general counsel, that's reflected in

1 J. FISCHMAN

2 page 1183; isn't that right?

3 A. Okay. Can you ask your  
4 question again?

5 Q. So this document exchange,  
6 you're providing your CV to Ms. Costa;  
7 isn't that right?

8 A. That is correct.

9 Q. And you're also providing  
10 language to be used in the notification  
11 about your elevation to acting general  
12 counsel, correct?

13 A. No, that is not correct.

14 Q. What is the top of 1183. What  
15 information were you providing to her?

16 A. To give you the context of what  
17 this request, MTPC which is Mitsubishi  
18 Tanabe Pharma Corp, which is a Japanese  
19 company, requested my CV in order to make a  
20 decision as to whether or not they would  
21 allow me to be secretary of their American  
22 subsidiaries.

23 So Donna asked me to provide  
24 her with my CV but also she said, in  
25 addition to a CV, to introduce who she is

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2 officially, MTPC would like information  
3 about her planned position in coming April.  
4 I actually have no idea how MTPC introduced  
5 me. All I know is that they had to approve  
6 me in order for me to be on their boards in  
7 the United States.

8 Q. Look at 1182.

9 A. Yes.

10 Q. And Ms. Costa provided  
11 constructive criticism on how to approach  
12 this exchange, correct? In the middle of  
13 that page.

14 A. She corrected some typos that I  
15 had in my CV probably and where I wrote --  
16 actually on 1183, I will be responsible for  
17 all legal matters in the Americas for all  
18 subsidiaries that MCHA supports and --

19 Q. They're not subsidiaries,  
20 right?

21 A. She corrected me that they are  
22 not subsidiaries but rather we call them  
23 affiliates because they are affiliates of  
24 MCHA but they are, in fact, subsidiaries of  
25 MCC, MCHC, and other companies like

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J. FISCHMAN

Mitsubishi -- at the time there was another Mitsubishi Plastics Inc. so I misused the term but it wasn't incorrect but from that point forward I never made that mistake again. I was happy to change it.

Q. And it said on the very top you said "noted, Donna noted, wasn't being as careful as I should have been. Must still be a bit groggy." You weren't feeling well at the time; isn't that right?

A. I must have, whether I'd been out sick or just home from a trip.

Q. In the first part of the exchange Ms. Costa wrote "I hope you are feeling better!" Did she not?

A. I didn't see that, I'm sorry. Do I have that?

Q. You do.

A. I hope you're feeling better, yeah.

Q. Exclamation point.

A. So I tried to do this when I was home sick, which I frequently tried to do, which was work even when I was home

1 J. FISCHMAN

2 sick.

3 Q. 1026 to 1028. These are e-mail  
4 exchanges between yourself and Ms. Costa,  
5 correct?

6 A. Mmhmm.

7 Q. And in these e-mail exchanges,  
8 Ms. Costa is providing you with counsel, is  
9 she not?

10 A. Yes. This was the e-mail that  
11 I was referring to earlier in my testimony  
12 today where I said that this was probably  
13 the only real constructive feedback that I  
14 received during the course of my being  
15 acting general counsel, and it was the  
16 first time and, in fact, I think if you'll  
17 look through the record, this is the first  
18 time she'd ever written me a constructive  
19 feedback in my tenure at Mitsubishi. I  
20 don't recall ever receiving such feedback,  
21 such extensive feedback.

22 Q. Ms. Fischman, we've gone  
23 through some your evaluations. There's  
24 quite a bit of constructive feedback that  
25 Ms. Costa gave to you, did she not?

1 J. FISCHMAN

2 A. Like what?

3 Q. We've already gone through your  
4 2015 -- I don't have the document in front  
5 of me, but we've gone through evaluations  
6 which were in front of you where Ms. Costa  
7 was very clear in giving you feedback,  
8 constructive feedback, correct?

9 A. If you could give me the  
10 example that you're thinking of that would  
11 be helpful. I thought it was -- which one  
12 are you speaking of?

13 Q. I'm going to ask you to take a  
14 look at 41 to 57, 1359 to --

15 A. Hold on, one a time, please.

16 Q. 41 to 57.

17 A. Which one is that?

18 Q. It's the one that's red lined.  
19 There's your year-end evaluation. There's  
20 your mid-year evaluation.

21 A. Stop for a second, please. The  
22 red line is mine. I red lined, so what is  
23 it that you're specifically pointing to?

24 Q. I'm going to let the record  
25 state what's already on the record but

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J. FISCHMAN

you've already described the back and forth communication that you had with Ms. Costa pertaining to training, coaching and constructive criticism, and constructive feedback that you received during the time that you worked for her?

MR. BERMAN: She's referring to the performance appraisals we've reviewed.

Q. I'll move on.

A. I don't know what you're referring to. Sorry. If you would like to bring up a sentence, or a page, or something, you can tell me what you mean.

Q. I think the record will stand for itself what you received from Ms. Costa under her supervision. 1234 to 1238.

MS. COLWIN: We are going to go off the record because this is fairly lengthy. I'm going to ask you to take a look at it.

THE VIDEOGRAPHER: The time on the video monitor is 4:06 p.m. We're off the record.

1 J. FISCHMAN

2 (Whereupon, an off-the-record  
3 discussion was held.)

4 THE VIDEOGRAPHER: We are back  
5 on the record. The time on the video  
6 monitor is 4:10 p.m.

7 Q. Ms. Fischman, you've had an  
8 opportunity to look at Defendant's  
9 Exhibit 1234 to 1238, correct?

10 A. I have.

11 Q. I'm going to ask you to take a  
12 look at what's Bates stamped 1235 and it's  
13 an e-mail exchange between Mr. Fujiwara to  
14 you with a copy to various individuals  
15 including Ms. Costa, correct?

16 A. Yes.

17 Q. And in this e-mail, Mr.  
18 Fujiwara is criticizing you for the  
19 exchange between yourself and Robert  
20 Dunkley at Lucite, isn't that right?

21 A. I don't characterize this as a  
22 criticism, because he is simply suggesting  
23 that we need to be more soft with this  
24 attorney in the UK, and I don't see any  
25 criticism of my language that I use.

1 J. FISCHMAN

2 Q. It says very specifically in  
3 the beginning of his e-mail, I'm so sorry  
4 to see this sort of e-mail fighting that is  
5 totally counterproductive and only worsens  
6 the relationship between an MCHA and  
7 Lucite. He's characterizing your exchanges  
8 with Mr. Dunkley as e-mail fighting. That  
9 is a criticism, is it not?

10 A. I think he's reacting to the  
11 emotional response that Robert gave to my  
12 very businesslike e-mail, which does not  
13 seem to indicate any attack or personal  
14 attack whatsoever, and Mr. Fujiwara  
15 definitely saw that there was something in  
16 Robert Dunkley's e-mail that he was upset.  
17 But the context of this, the context of  
18 this situation, was that there was a lot of  
19 pressure on the US and the UK Lucite  
20 businesses, for which I was helping to  
21 support, and Robert was very difficult from  
22 everybody's perspective, and we were just  
23 all working to find a way to satisfy him.  
24 And as you can see in the following e-mail,  
25 I had a very amicable conversation with him

1 J. FISCHMAN

2 where I believe that the incident was  
3 behind us and that the issues that Lucite  
4 had with the entire project did not  
5 originate with me or MCHA.

6 Q. Looking at your e-mail response  
7 in 1234, you understood that you had a  
8 fractured relationship with Mr. Dunkley  
9 that had to be repaired, correct?

10 A. I believe that there was a  
11 misunderstanding --

12 Q. You're not answering the  
13 question. Didn't you, by expressing "I  
14 think our relationship can improve," meant  
15 that you had a fractured relationship with  
16 Mr. Dunkley that needed to be fixed,  
17 correct?

18 A. No, I disagree.

19 Q. And you give assurances, do you  
20 not, that the relationship you had with  
21 Mr. Dunkley will improve in time, correct?

22 A. Yes.

23 Q. Take a look at 186 to 187. Ms.  
24 Fischman, if you can take a look at this  
25 Document, 186, 187, you have seen this

1 J. FISCHMAN

2 document before, have you not?

3 A. I've seen this in discovery.

4 Q. So you reviewed it before  
5 today, isn't that right?

6 A. I have read it recently when  
7 you disclosed it, or produced it, rather.

8 Q. So let's begin when you're  
9 ready in the third sentence, the second  
10 sentence -- third sentence and second  
11 paragraph and before we begin, tell me what  
12 this document is?

13 A. What do you mean?

14 Q. Do you know what this document  
15 is?

16 A. No.

17 Q. This is an e-mail exchange  
18 between Ms. Costa and Ms. Saunders. This  
19 is a draft e-mail that she intends to send  
20 to Mr. Fujiwara, correct?

21 A. That's what she writes here.

22 Q. And she's asking for  
23 Ms. Saunders to give her feedback; isn't  
24 that right?

25 A. That's what she says in the

1 J. FISCHMAN

2 e-mail.

3 Q. In the third sentence in the  
4 second paragraph, Ms. Costa writes  
5 "although Jennifer is smart, the breadth  
6 and depth of her legal expertise were  
7 limited. She had no management experience  
8 and she often behaved in a way that was  
9 incompatible with the position. I've  
10 received many complaints about her style  
11 and attitude that impacted both her  
12 credibility and effectiveness." At the  
13 time that this was written, so this is  
14 2015, prior to your elevation to acting  
15 general counsel, you had no management  
16 experience, correct?

17 A. I had some limited management  
18 experience in my capacity at Raytheon where  
19 I was on the leadership team there and  
20 responsible for legal matters there and  
21 supervising a paralegal and an assistant,  
22 legal assistant, and then in my promotion  
23 to acting -- I mean assistant general  
24 counsel, I was responsible for managing  
25 Mika. We had very small department, so I

1 J. FISCHMAN

2 would say there weren't many people to  
3 manage; however, I was responsible for  
4 managing the legal matters across multiple  
5 businesses and over multiple years, so I'm  
6 going to disagree with that statement.

7 MS. COLWIN: I'm going to move  
8 to strike as unresponsive.

9 Q. This statement say that you had  
10 no management experience. You would agree  
11 with me that you had no management  
12 experience with respect to attorneys? You  
13 never managed attorneys prior to your  
14 elevation to acting general counsel,  
15 correct?

16 A. I had no experience with  
17 managing attorneys who worked directly for  
18 me within the legal department. However, I  
19 managed outside counsel for years and the  
20 management of outside counsel is very  
21 important type of management.

22 Q. You'd agree with me, would you  
23 not, that managing outside counsel in  
24 litigation matters is very different than  
25 managing attorneys that report in to the

1 J. FISCHMAN

2 general counsel, wouldn't you agree?

3 A. I don't agree entirely.

4 Q. What's the basis for your  
5 disagreement on that statement?

6 A. I've managed both and I believe  
7 that management of individual performance  
8 and productiveness is universal.

9 Q. You understood that Ms. Costa  
10 was providing this feedback based on her  
11 experiences with you in this new role as  
12 acting general counsel, correct?

13 A. What feedback are you --

14 Q. She is providing her perception  
15 of how you were doing in this new position  
16 as acting general counsel; isn't that  
17 right?

18 A. That is not my takeaway from  
19 this document. My takeaway from this  
20 document is --

21 Q. This is not her opinion? This  
22 is not her perception of how your --

23 A. No, this is paper in the record  
24 so that she has a basis to demote me.

25 MR. BERMAN: Objection to form

1 J. FISCHMAN

2 because the witness has not been  
3 allowed to complete her responses.

4 MS. COLWIN: You can read it  
5 back, Enrique. Just read back her  
6 response and I'll pick it up from  
7 there.

8 (Whereupon, the referred to  
9 answer was read back by the  
10 Reporter.)

11 Q. So is it your testimony that  
12 this sentence that I read into the record,  
13 that's in this document, 186, 187,  
14 specifically 186 is false?

15 A. I believe that this entire  
16 document is false. I think it's  
17 manufactured and fabrication in order to  
18 support a decision.

19 Q. What factual basis do you have  
20 to set forth that this is a false document?

21 A. She never sent this document  
22 and where is her status report on how I was  
23 doing from April to June? This document is  
24 a fabrication.

25 Q. If we were to --

1 J. FISCHMAN

2 A. The things in it are not true  
3 Mercedes.

4 Q. But you are saying that her  
5 perceptions are false. What I'm asking you  
6 is what written documentation do you have  
7 to support that?

8 A. The written documents that I  
9 have contradict these. I have eight years  
10 of performance reviews where not a single  
11 one of these things are mentioned. I have  
12 accolades from client who said that I was  
13 an excellent lawyer. This, it's nonsense.

14 Q. But Ms. Fischman, this  
15 criticism that's in this document, you'd  
16 agree with me, is about your performance as  
17 an acting general counsel, not as a  
18 corporate counsel and not as an assistant  
19 general counsel, it is your performance as  
20 an acting general counsel, correct?

21 A. Tell me what you -- you know I  
22 kind of lost track of what your question is  
23 so why don't you start with what your exact  
24 question is --

25 Q. My question was very clear, Ms.

1 J. FISCHMAN

2 Fischman.

3 A. But I've forgotten it.

4 MS. COLWIN: Can we have that  
5 repeated please.

6 (Whereupon, the referred to  
7 question was read back by the  
8 Reporter.)

9 A. This is a document that was  
10 never provided to me and --

11 Q. You're not answering the  
12 question, Ms. Fischman. Just answer the  
13 question. This is about your position as  
14 an acting general counsel, not about your  
15 prior positions within MCHA; that's all I'm  
16 asking.

17 A. It does appear to be written  
18 during the time that I was acting general  
19 counsel, yes.

20 Q. And in the document itself  
21 Ms. Costa writes "she often behaved in a  
22 way that was incompatible with the  
23 position." In the subheading it says  
24 general counsel, correct?

25 THE WITNESS: Can you read back

1 J. FISCHMAN

2 that question.

3 (Whereupon, the referred to  
4 question was read back by the  
5 Reporter.)

6 A. Can you point me to the  
7 paragraph where you're reading from,  
8 please?

9 Q. Second paragraph, same sentence  
10 that we on have on the record.

11 A. Second paragraph.

12 Q. Third sentence.

13 A. I don't know what she's  
14 referring to in that sentence.

15 Q. Do you have any reason to  
16 believe that the position that she's  
17 writing in that statement is anything other  
18 than general counsel?

19 A. I have no idea. It's a bit  
20 vague, especially with the parenthetical  
21 afterwards. It's definitely vague.

22 Q. Above that it says I'm writing  
23 to provide you with a status report on  
24 Jennifer to explain why I would like to  
25 replace her as general counsel. So

1 J. FISCHMAN

2 presumably this entire document is about  
3 your performance as a general counsel;  
4 isn't that right?

5 A. This first paragraph is about  
6 before I was general counsel, so it's not,  
7 right; it's past tense, so no.

8 Q. Now this communication about  
9 replacing you as general counsel is dated  
10 on August 7, 2015, correct?

11 A. Yes.

12 Q. Look at the top of the  
13 document, and you've seen from documents  
14 that are produced in this litigation, that  
15 the first date that Mr. Oliva and Ms. Costa  
16 met was on August 9th. That was before the  
17 first time --

18 A. Sorry, I don't know. I don't  
19 know anything about her meetings with Nick  
20 Oliva.

21 Q. If you could take a look at  
22 Bates stamp 35.

23 MS. COLWIN: I just want to  
24 note for the record, and it will be  
25 established through testimony, that

1 J. FISCHMAN

2 August 24th is first time that Ms.

3 Costa and Mr. Oliva met in 2015.

4 MR. BERMAN: Objection. That's  
5 not a question.

6 MS. COLWIN: It's on the  
7 record.

8 MR. BERMAN: Are you  
9 testifying?

10 Q. Do you have any reason to  
11 dispute the fact that Ms. Costa and Mr.  
12 Oliva met on August 24th, 15 days after  
13 this communication was written to  
14 Ms. Saunders?

15 A. Yes, because I've been provided  
16 no evidence of their meeting or lack of  
17 meetings.

18 Q. Do you have any evidence to  
19 establish that they met -- no, I'm asking  
20 you, Ms. Fischman. Do you have any  
21 evidence that --

22 A. I have no evidence that they've  
23 ever met because I am not Nick or Donna and  
24 I cannot testify as to when they met. I  
25 mean come on. I'm not trying to be cute.

1 J. FISCHMAN

2 I'm just you're asking me like, you know.

3 Q. Okay. The records speaks for  
4 itself. Exhibit Bates stamped 35. You've  
5 seen this document before, have you not?

6 A. Yes.

7 Q. And this is a document that was  
8 addressed to you from Kelli Troccoli,  
9 correct?

10 A. Yes.

11 Q. She worked at MCHA, we've  
12 already established that; isn't that right?

13 A. Yes.

14 Q. And in it Ms. Troccoli is  
15 advising both you and Ms. Costa that she  
16 has a serious illness; isn't that right?

17 A. That's what it says.

18 Q. Did you believe her?

19 A. I never received a doctor's  
20 note or even what the serious illness was,  
21 so I had to take it at face value.

22 Q. That would be managed through  
23 HR and Ms. Saunders, is that right, any  
24 doctor notes?

25 A. I would expect so.

1 J. FISCHMAN

2 Q. Now, by the way, you were  
3 promoted to acting general counsel, you had  
4 been working with Ms. Troccoli for nearly  
5 seven years; isn't that right?

6 A. Yes.

7 Q. And during that time  
8 Ms. Troccoli had reported directly to Ms.  
9 Costa?

10 A. Correct.

11 Q. And then when you were elevated  
12 to acting general counsel, she began to  
13 report to you; isn't that right?

14 A. Yes.

15 Q. Bates stamp 1040 to 1044. Do  
16 you recognize this document?

17 A. Yes, I do.

18 Q. And you recognize this document  
19 as an e-mail exchange between yourself,  
20 Ms. Saunders, with a copy to Donna Costa,  
21 correct?

22 A. Yes.

23 Q. And in that first page of 1040,  
24 you ask Ms. Saunders to help you guide your  
25 relationship with Ms. Kelli, correct?

1 J. FISCHMAN

2 A. Can you repeat that, Mercedes?

3 I'm sorry, I was reviewing the document  
4 while you were talking. I apologize.

5 Q. No worries. You were seeking  
6 guidance from Ms. Saunders on how to manage  
7 Kelli Troccoli in this e-mail exchange,  
8 correct?

9 A. Yes.

10 Q. What were the underlying  
11 reasons that you were seeking guidance from  
12 Ms. Saunders pertaining to your  
13 relationship with Ms. Troccoli?

14 A. Ms. Troccoli was Donna's  
15 assistant for many years, even before I  
16 began at the company, and she made it very  
17 clear that she was very unhappy when I was  
18 elevated to acting general counsel by  
19 spending a lot of time in Donna's office  
20 crying. And she was disrespectful to me on  
21 a number of occasions, and I knew that  
22 Donna and I had talked about the fact that  
23 Donna was not going to be taking Kelli as  
24 her assistant when she became president.  
25 And back in December, and during those

1 J. FISCHMAN

2 December meetings, Kelli was one of the  
3 topics.

4 Kelli did not want to work for  
5 me and I wanted to figure out a way to  
6 improve that relationship. I often sought  
7 guidance from Donna, but she asked me to  
8 speak with Pat. So Pat, being the HR  
9 manager, I felt it was constructive to work  
10 with Pat on learning to get the best  
11 productivity out of Kelli.

12 Q. Didn't you seek counsel from  
13 both Ms. Costa and Ms. Saunders regularly  
14 in order to manage the relationship with  
15 Ms. Troccoli and others in the department?

16 A. I don't think it would be  
17 unusual for me to say that I -- that part  
18 of the transition was discussing the best  
19 way to, as I said in one of our earlier  
20 exchanges, to go from peer to leader is  
21 often a difficult transition and so, yeah I  
22 definitely sat with both Donna and Pat in  
23 discussions on the best way to move forward  
24 in that way.

25 MS. COLWIN: Can I take a look

1 J. FISCHMAN

2 at 892.

3 THE WITNESS: I need a break.

4 THE VIDEOGRAPHER: The time on  
5 the video monitor is 4:38 p.m. We  
6 are off the record.

7 (Whereupon, a short recess was  
8 taken.)

9 THE VIDEOGRAPHER: We are back  
10 on the record. The time on the video  
11 monitor is 4:58 p.m. This starts  
12 media 5.

13 (Whereupon, Document was marked  
14 as Defendant's Exhibit 892 for  
15 identification as of this date.)

16 Q. Ms. Fischman, I'm showing you  
17 what's been marked as 892. You have seen  
18 this document before today, correct?

19 A. It was in your document  
20 production and I did see it.

21 Q. Do you recognize this document  
22 other than when it was produced?

23 A. No.

24 Q. Do you have an understanding of  
25 what this document is?

1 J. FISCHMAN

2 A. No.

3 Q. In June of 2015, didn't Ms.  
4 Costa describe you as being defensive in  
5 your communication with her?

6 A. Not that I have any  
7 recollection of.

8 Q. In June of 2015, didn't Ms.  
9 Costa say that she felt you always needed  
10 to have the last word when communicating  
11 with her?

12 A. I've never heard her say that  
13 to me before.

14 Q. Didn't Ms. Costa say to you  
15 learn to say yes, okay, I agree?

16 A. I don't recall her ever saying  
17 those words to me.

18 Q. Didn't she say to you, in June  
19 of 2015, you have to listen more and talk  
20 less?

21 A. I don't have any recollection  
22 of that.

23 Q. Didn't she also give you  
24 constructive feedback that you need to read  
25 e-mails thoroughly and not just respond to

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J. FISCHMAN

it?

A. I have no recollection of that.

Q. Take a look at Exhibit 1206.  
Taking a look at 1206, that is your e-mail  
communication between you and Ms. Saunders,  
correct?

A. Yes, it is.

Q. And this is in July of 2015; is  
that right?

A. Yes, it is.

Q. You were commending Ms.  
Saunders for the advice that she had given  
you regarding an interaction you had with  
Ms. Troccoli; isn't that right?

A. Yes, I believe this is in  
response to Exhibit 1040 where I requested  
her assistance.

Q. Who did you, in the legal  
department at MCHA, did you admire?

MR. BERMAN: Object to form.

A. In what way?

Q. Who did you admire in the legal  
department at MCHA?

A. At what time?

1 J. FISCHMAN

2 Q. I'm talking about 2015, the  
3 time you were acting general counsel, who  
4 did you admire?

5 A. In the legal department.

6 Q. Strictly legal department.

7 A. Certainly, I liked everybody.  
8 I always admired Katherine Roach. Steven  
9 Rose was terrific; I hired him. Joe  
10 Sherinsky, great people, and Mikosami, I  
11 admired her actually a great deal.

12 Q. This is in 2015. Now from 2008  
13 to 2015, who did you admire?

14 A. Well, of course, I admired my  
15 boss, Donna Costa, and Katherine Roach and  
16 who else was in the legal department?  
17 Nathan Gallup. Admired is a very  
18 subjective word. I admired all of them.

19 Q. Who's all of them?

20 A. Those people that I just named.

21 Q. Between 2008 and 2015, who did  
22 you respect in the legal department?

23 A. Same people.

24 Q. And 2015?

25 A. Same people.

1 J. FISCHMAN

2 Q. And in 2015?

3 A. Same people.

4 Q. In 2015 to 2017, who did you  
5 respect within the legal department at  
6 MCHA?

7 A. Well, let's see. I respect --  
8 I respected every member of the legal  
9 department. And I'd like to go back and  
10 revise my answer from the earlier response  
11 to from 2008 to 2015, I respected every  
12 employee of MCHA and every member of the  
13 legal department.

14 Q. How about with respect to the  
15 legal acumen, the individuals exhibited in  
16 MCHA legal between 2008 and 2015?

17 A. Yeah, can you repeat the  
18 question, Mercedes, just a little bit  
19 clearer?

20 Q. Sure. Who did you respect with  
21 respect to legal skills, legal acumen, who  
22 did you respect in the MCHA legal  
23 department between 2008 and 2015?

24 A. I respected all of the lawyers  
25 in the legal department.

1 J. FISCHMAN

2 Q. And what is your answer for  
3 2015? Who did you respect with respect --

4 A. Same answer.

5 Q. -- legal competency, their  
6 legal skills?

7 A. Same answer. I respected all  
8 of the members of the legal department up  
9 until my termination in 2017.

10 Q. In 2015 to 2017, who did you  
11 admire within the MCHA legal department?

12 MR. BERMAN: Object to form.

13 A. I have answered that already.

14 Q. That's a different timeframe.

15 A. Who did I admire in the legal  
16 department? My admiration didn't wane. I  
17 still admired Katherine Roach and -- seems  
18 a little silly but I'd like to know what  
19 the actual definition is of the word  
20 "admired" and what you're looking for.

21 Q. I'm not looking for anything  
22 other than your testimony and your truthful  
23 statements, Ms. Fischman.

24 A. Obviously, but I guess admire  
25 is kind of a broad term to use and --

1 J. FISCHMAN

2 Q. And you've answered about 15  
3 questions concerning who you admired so I'm  
4 assuming --

5 A. 15?

6 Q. 15, you're keeping count, I  
7 appreciate that.

8 A. No, not at all. I think it was  
9 like two questions. You asked me who I  
10 admired in the legal department from 2008  
11 to 2015.

12 Q. But let me rephrase and ask you  
13 2015 to 2017, who did you admire within the  
14 legal department?

15 A. Admire in the legal department.  
16 Anne Riley, Katherine Roach, Steven Rose,  
17 Joe Sherinsky. I admired all of them and  
18 respected them.

19 Q. You've described yourself as a  
20 primary employment lawyer in your  
21 complaint, correct?

22 A. No.

23 Q. You've described yourself as  
24 the primary employment lawyer in the  
25 complaint.

1 J. FISCHMAN

2 A. If you could just point to the  
3 language of the complaint, I think that  
4 would be helpful. I think the complaint  
5 speaks for itself.

6 Q. You would agree with me that  
7 you had, by 2015, pretty extensive  
8 knowledge on employment law, correct?

9 A. I think that by -- what date  
10 did you use?

11 Q. 2015.

12 A. By 2015, I was responsible for  
13 -- I was the primary attorney responsible  
14 for employment matters in our MCHA legal  
15 department.

16 Q. Take a look at 236 to 238.  
17 These are e-mail exchanges between  
18 yourself, Kelli Troccoli and other  
19 exchanges between yourself and  
20 Ms. Saunders, correct?

21 A. Yes.

22 Q. On the first page, 236, you say  
23 there is presumably a meeting that you had  
24 with Ms. Saunders following this exchange;  
25 isn't that right?

1 J. FISCHMAN

2 A. No.

3 Q. Did you ever discuss with Ms.  
4 Saunders what took place in the e-mail  
5 exchanges between yourself and  
6 Ms. Troccoli?

7 A. Yes, at a later date.

8 Q. Do you recall the date that you  
9 met her?

10 A. I don't recall the date that I  
11 met with her.

12 Q. Did you believe that the  
13 exchange that you had with Ms. Troccoli was  
14 appropriate?

15 A. I believe that the e-mail that  
16 I sent to Ms. Troccoli was appropriate,  
17 yes.

18 Q. And did you think that the  
19 response was appropriate from Ms. Troccoli?

20 A. No, I did not.

21 Q. Why is that?

22 A. Because it was extremely  
23 defensive, argumentative. She  
24 misunderstood what I said and clearly was  
25 very angry about something, but I had never

1 J. FISCHMAN

2 intended any anger, as you can see by my  
3 e-mail, which is completely professional  
4 and friendly.

5 Q. At the time that you met with  
6 Ms. Saunders about this e-mail exchange  
7 that we're discussing, which you stated on  
8 the record at a later day, tell us what you  
9 said to Ms. Saunders and what she said to  
10 you in response, to the best of your  
11 recollection.

12 A. I met with Pat to discuss the  
13 best way to talk about this with Kelli and  
14 she suggested that I set up a meeting when  
15 I return from vacation. Kelli was going to  
16 be on vacation one week and then I was  
17 going on the vacation the following week, I  
18 believe, or it was when she gets back from  
19 vacation or something like that.

20 I can't remember exactly and  
21 Pat suggested that I bring with me a copy  
22 of the e-mail exchange and take it out and  
23 try calmly explain that I was simply asking  
24 her to do documents that she did all the  
25 time and that had -- that there was nothing

1 J. FISCHMAN

2 behind this and that just to kindly and  
3 softly speak with her.

4 Q. On August -- I'm going to  
5 direct your attention to 194 at the very  
6 end. You've seen this communication  
7 before, correct?

8 A. No.

9 Q. This is the first time you're  
10 seeing this document?

11 A. No. I may have seen it in your  
12 --

13 Q. Production?

14 A. Production.

15 Q. This is an e-mail communication  
16 between Ms. Troccoli and Ms. Costa, subject  
17 line info requested, and there are bullet  
18 points there. This is pertaining to Ms.  
19 Troccoli's assessment as to your  
20 performance as acting general counsel. Any  
21 of the bullet points accurate?

22 A. No, of course not.

23 Q. What purpose do you believe  
24 exists for Ms. Troccoli to lie about her  
25 perceptions of your performance as acting

1 J. FISCHMAN

2 general counsel?

3 A. Ms. Troccoli was a legal  
4 secretary in our department who was very  
5 upset that I was given this position. She  
6 did absolutely nothing to support me  
7 throughout and she could have no basis for  
8 most of the -- most of her bullet points.  
9 She could have absolutely no basis as her  
10 role, as being an assistant, to know any of  
11 this information, so I think it's all  
12 nonsense.

13 Q. I asked for the purpose. What  
14 is your belief as to why she would have  
15 done that Ms. Troccoli?

16 MR. BERMAN: Object to form.

17 A. I have no idea.

18 Q. Do you have any belief as to  
19 why she did that?

20 A. She didn't like me, so why --  
21 she didn't have any interest in supporting  
22 me.

23 Q. Take a look at 1169 and 1170.  
24 You've seen this document before today, Ms.  
25 Fischman?

1 J. FISCHMAN

2 A. Yes, through your document  
3 production.

4 Q. And this is an e-mail  
5 communication between Ms. Troccoli and Ms.  
6 Costa, correct?

7 A. That's what it appears to be.

8 Q. This is Ms. Troccoli's  
9 perception of your behavior as an acting  
10 general counsel, in which she states that  
11 you get defensive and nasty with her when  
12 she raises Ms. Costa's name; is that true?

13 A. No, that was not true.

14 Q. What is your belief -- you're  
15 saying that it's untrue?

16 A. Absolutely 100 percent untrue.

17 Q. What do you believe is the  
18 purpose behind Ms. Troccoli making false  
19 statements about you?

20 A. Because if you look at the  
21 corresponding timeframe of the two  
22 documents you've presented to me today, one  
23 is Defendant's 238 and the other is  
24 Defendant's 1169, you can see that these  
25 documents were written at exactly the same

1 J. FISCHMAN

2 time within ten minutes of each other and  
3 you can see that my response to her was  
4 yes, thanks Kelli, as I mentioned when I  
5 told you about it, I said that Mike asked  
6 us to do this on short notice and that I  
7 would be checking with resilient counsel,  
8 but since it is next week and you're out  
9 again, I wanted to get the documents from  
10 you. I will take care of it from here.  
11 Thanks, enjoy your vacation. So my basis  
12 for saying that I was defensive and nasty  
13 with her is the fact that I was completely  
14 professional in my communication with her  
15 on this exact same date on this exact same  
16 issue.

17 Q. By then you were already  
18 notified by Ms. Troccoli, in April, this is  
19 after you became acting general counsel on  
20 April 1st, April of 2015, she had already  
21 identified, for both you and Ms. Costa,  
22 that she had a very serious illness,  
23 correct?

24 A. Are we moving on to a new  
25 topic?

1 J. FISCHMAN

2 Q. No. Subject to connection.  
3 She had already told you by this time, back  
4 in April of 2015, after you were acting  
5 general counsel, that she suffered from a  
6 very serious illness, correct?

7 A. On April 17, 2015, she sent a  
8 text or an e-mail to both Donna and I.

9 Q. So the answer is yes?

10 A. Defendant's 35, yeah.

11 Q. So you knew, as of this  
12 communication, that she suffered from a  
13 serious illness; isn't that right?

14 MR. BERMAN: Object to form.

15 A. On this particular day, she was  
16 in the office doing work.

17 Q. The subject line --

18 A. So my answer to you is there's  
19 no relevance in looking at this document as  
20 to her illness because it doesn't come up  
21 in this document.

22 Q. Well, her illness doesn't come  
23 up in the document but the subject line is  
24 "are you there" and that's what you wrote,  
25 correct?

1 J. FISCHMAN

2 A. Yeah.

3 Q. And then in the e-mail itself  
4 you wrote "out again."

5 A. Yeah, but she was going on  
6 vacation the following week and she  
7 probably had been out during the course of  
8 this week as well.

9 Q. And Ms. Troccoli responded to  
10 that, on page 237, when she writes with  
11 exclamation points "out again, really  
12 Jenn," correct?

13 A. What are you asking me?

14 Q. I'm not asking anything. She  
15 basically responded to you by saying -- she  
16 reacted to you saying that she was out  
17 again and she reacted by giving you that  
18 response, did she not, as reflected in 237?

19 A. Yes.

20 Q. 199 to 200. Taking a look at  
21 Document 199 to 200. You've seen this  
22 document before, have you not?

23 A. No, I have not.

24 Q. You didn't see it in the  
25 production?

1 J. FISCHMAN

2 A. No, I did not.

3 Q. So I'm going to direct you to  
4 page 200. This is an e-mail communication  
5 between Ms. Saunders and Ms. Costa, dated  
6 August 14th, 2015, and in this e-mail  
7 communication to Ms. Saunders Ms. Costa  
8 writes "be good to Jennifer while I'm  
9 away!" You were not copied on this e-mail,  
10 correct?

11 A. No, I was not.

12 Q. Do you believe that Ms. Costa  
13 was sincere when she had written that about  
14 you?

15 A. I have no idea what she's  
16 referring to at all. You haven't provided  
17 anything below, which I assume this is in  
18 response to, which probably should've been  
19 provided to us, to give us the context of  
20 this, because I'm sure there was a context  
21 so --

22 Q. Is that an assumption, Ms.  
23 Fischman, because that is the complete  
24 exchange between Ms. Saunders and Ms.  
25 Costa.

1 J. FISCHMAN

2 A. I have no idea. I have no idea  
3 what that is about.

4 Q. 1014 to 1015. You've seen this  
5 document before today, correct?

6 A. I've seen it discovery.

7 Q. This document is an exchange  
8 between Ms. Costa and Ms. Saunders about an  
9 exchange that you had had with Ms. Saunders  
10 at that time in which you went into Ms.  
11 Saunders' office and basically threatened  
12 that you would quit if Ms. Troccoli was not  
13 fired; isn't that right?

14 MR. BERMAN: Object to form.

15 A. No, that's actually not  
16 correct.

17 Q. Let me ask you this next  
18 question. Did you demand that Ms. Troccoli  
19 be terminated?

20 A. Oh my God, no.

21 Q. Did you say that you would quit  
22 if she wasn't terminated?

23 A. No, never.

24 Q. You had a conversation with Ms.  
25 Saunders at or around this time. What was

1 J. FISCHMAN

2 said in that conversation, at or about  
3 August 25, 2015, between yourself and Ms.  
4 Saunders, to the best of your recollection?

5 A. To best of my recollection we  
6 talked about this e-mail from Defendant's  
7 237 as well as my general frustration that  
8 I needed additional support because Kelli  
9 was out of the office quite a bit for her  
10 illness, and also for many personal  
11 reasons, and then also for vacation days.

12 And so the number of days that  
13 she was in the office supporting me was  
14 very little, and then on top of that, she  
15 was not nice to me. So as expressed in  
16 earlier exhibit, where I was asking for  
17 help on a small matter, so it was very  
18 difficult to work under those  
19 circumstances.

20 So yes, I went to Pat and  
21 expressed my frustration, based on this  
22 July 12th interaction as well as asking her  
23 to do the board documents for MCP Brazil.  
24 During that exchange with Pat, with her  
25 door closed, Pat said well, she's just a

1 J. FISCHMAN

2 bully, and we agreed that that was how she  
3 operates so you have to work around that.  
4 And you know what I did say to her, which  
5 is what Donna said to me, in December 2014,  
6 is I know that working with Kelli is going  
7 to be challenging but once she's working  
8 for you that will be up to you how you  
9 handle it.

10 And what I took from that was  
11 if it doesn't work out with you and Kelli,  
12 then you would have the ability to  
13 terminate her. However, I never suggested,  
14 at any time, that we would terminate Kelli,  
15 because that would create great deal of  
16 risk for the company and I never ever would  
17 put the company risk.

18 Did I say God, I wish I could  
19 get rid of her? Probably, because she was  
20 unhelpful and I was running this department  
21 at a deficit, so yeah, in my frustration I  
22 probably said that. But if there were, you  
23 know, but Pat was there, Pat can speak to  
24 it.

25 Q. Ms. Fischman, you testified

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J. FISCHMAN

that terminating Ms. Troccoli would've  
created a great risk for MCHA, correct?

A. Yes, 100 percent.

Q. She has a medical condition,  
we've already established that on the  
record, and you knew that to be so,  
correct?

MR. BERMAN: Object to form.

Q. When Ms. Saunders testifies,  
she will testify that you did, in fact,  
threaten to quit if Ms. Troccoli was not  
terminated. Is it your testimony that Ms.  
Saunders is lying?

MR. BERMAN: Object to form.

A. I have no idea what Ms.  
Saunders will say in her testimony. She  
and I were in the room together and, as I  
expressed to you just now, I may have, in  
my deep frustration, said it's got to be  
either her or me, but there was no chance  
that we were ever going to terminate Kelli  
Troccoli under any circumstances and that  
was never even a serious conversation at  
all.

1 J. FISCHMAN

2 Q. The date that you met Ms.  
3 Saunders is -- I'm going to show you  
4 document, it's page 896. Have you seen 896  
5 before?

6 A. No.

7 Q. We went to the liberty of  
8 having it typewritten. You've never seen  
9 this document before?

10 A. No.

11 Q. I will represent to you that  
12 these are Pat Saunders' notes that she  
13 took during her conversation with you on  
14 August 17, 2015. Do you have any reason to  
15 dispute that?

16 A. I have no reason to dispute  
17 that I said sat in her office on August 17,  
18 2015.

19 Q. Do you have any reason to  
20 dispute the authenticity of these notes?

21 A. I don't have any reason to  
22 dispute the authenticity of these notes but  
23 don't know if they're a full accounting of  
24 the fairly long conversation that we had  
25 when there's only one page of notes

1 J. FISCHMAN

2 provided here.

3 Q. Is there anything, and you can  
4 read the full page on page 896 and then the  
5 typewritten portion. Is there anything  
6 that's reflected in this document that is  
7 not accurate?

8 A. No. I'm sorry, what was your  
9 question? Is any of it inaccurate?

10 Q. Yes.

11 A. There's nothing inaccurate  
12 here.

13 Q. Did you ever make a chart on  
14 Ms. Troccoli's absences?

15 A. Yes.

16 Q. Did you believe that all the  
17 absences that Ms. Troccoli had were related  
18 to her illness?

19 A. No, I did not believe that.

20 Q. What's the basis for your  
21 belief that --

22 A. Because she used to text me all  
23 the time and say I'm not going to be in  
24 today. I'm working from home today because  
25 my so and so -- my boyfriend's nanny didn't

1 J. FISCHMAN

2 show up and I'm going to babysit. She  
3 texted me and told me where she was going  
4 to be. In addition, she had personal days  
5 and vacation days as well.

6 Q. Take a look at 253 to 254.  
7 Before you answer any questions about this  
8 document, did you believe that the chart  
9 that you created pertaining to Ms.  
10 Troccoli's absences were accurate?

11 A. I believe that I had a fairly  
12 accurate picture, but again, if she had  
13 submitted things to HR about her absences,  
14 I think I had given it to Pat and she could  
15 have corrected any inaccuracies.

16 Q. You've seen this document  
17 before?

18 A. No, actually.

19 Q. So this is -- just take a  
20 minute to read. If you could take look at  
21 the second part which is 254, this is an  
22 e-mail exchange between Ms. Costa and Ms.  
23 Saunders, where Ms. Costa discovered some  
24 inaccuracies in your chart, correct?

25 A. That's what she writes here.

1 J. FISCHMAN

2 Q. Is that a true statement?

3 A. I have no idea.

4 Q. Take a look 244 to 246. You've  
5 seen this document before, correct? Ms.  
6 Fischman, what was your motivation behind  
7 retaining Mr. Moss?

8 A. I was concerned that Ms.  
9 Troccoli, or Kelli, was out of the office a  
10 great deal between April 1st and the date  
11 of that e-mail, or exchange, was about  
12 August 12th or something, August 10th, and  
13 that we weren't really tracking what was  
14 personal, what was medical, what was  
15 vacation days.

16 It just felt like she was out  
17 all the time and I needed help and I just  
18 didn't feel like she was around, and as had  
19 been explained earlier with Ms. Saunders,  
20 with Pat, which is that it's really hard to  
21 e-mail and text with her; that things got  
22 miscommunicated easily --

23 Q. But what was the --

24 A. Let me finish my sentence,  
25 please.

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J. FISCHMAN

Q. But you're not answering the question. What possessed you to retain Mr. Moss?

A. I wanted to make sure that Kelli was not -- that her excessive absences were all for medical and those that weren't had to be counted so -- because her performance for me was unacceptable. And so therefore, I wanted to record and know how to proceed and also know how to interact with her in light of her illness so that anything that I did or said could not be misconstrued as retaliatory for her illness. That's why I sought counsel. I wanted to make sure that I didn't do anything to hurt the company.

Q. Understood. And that was a labor and employment counsel that you sought at the --

A. Yes.

Q. Did you ever speak to anyone at MCHA that you were seeking counsel on this particular issue?

A. I was the acting general

1 J. FISCHMAN

2 counsel at the time, so no.

3 Q. Did you tell Ms. Costa?

4 A. I felt I had the authority. I  
5 don't recall if I told her or not. It was  
6 summer, a lot people were on vacation.

7 Q. Do you think that it was  
8 important for Ms. Costa to know that you  
9 had retained counsel regarding the Kelli  
10 Troccoli concerns you had?

11 A. Actually, I had not retained  
12 counsel. I had worked with Steve Moss on  
13 multiple other matters over the course of  
14 my employment at MCHA and so I called him.  
15 He never billed us for this time, as far as  
16 I recall, and I called him for some free  
17 advice on the best way to handle this  
18 situation.

19 Q. Why didn't you tell Ms. Costa  
20 that you were seeking this free advice from  
21 Mr. Moss?

22 A. I don't recall. I wasn't  
23 trying to hide it. I honestly just was  
24 trying to do my job.

25 Q. Take a look at 900. Have you

1 J. FISCHMAN

2 seen this document before?

3 A. No.

4 Q. This is the first time you're  
5 seeing it?

6 A. Yes.

7 Q. At or around this time, which  
8 would have been August 28th, didn't  
9 Ms. Costa meet with you regarding a  
10 complaint, a formal complaint, that Ms.  
11 Troccoli had lodged against you?

12 A. You're showing me something  
13 marked 827, but you're asking me about  
14 something that happened on 828.

15 Q. Take a look at Document 900.  
16 It says 828 on the very top. That is the  
17 page that I have directed you to look at.

18 A. Okay.

19 Q. And it says 828, DC, meaning  
20 Donna Costa, were in meeting with JF,  
21 meaning you, correct?

22 THE WITNESS: Could you read  
23 back the question for me please.

24 (Whereupon, the referred to  
25 answer was read back by the

1 J. FISCHMAN

2 Reporter.)

3 A. Yes. After I returned from  
4 vacation, I had a meeting with Kelli,  
5 actually, that I had scheduled pursuant to  
6 Pat Saunders' recommendation of how to  
7 speak to her and also how to talk about  
8 that e-mail, about the Brazil documents,  
9 and I sat down with her and I took out the  
10 e-mail and she refused to speak to me and  
11 she said you should go talk to Donna. So I  
12 went to talk to Donna and she wasn't  
13 available until 3:00 that afternoon, and at  
14 that time she explained to me that Kelli  
15 had made a formal complaint based on  
16 overhearing a conversation that, a  
17 confidential conversation that I had with  
18 Pat Saunders in her office.

19 Q. So that meeting took place  
20 between the two of you, correct?

21 A. Yes.

22 Q. And it was during that meeting  
23 that Ms. Costa had said to you that there  
24 would be an investigation surrounding Ms.  
25 Troccoli's allegations against you,

1 J. FISCHMAN

2 correct?

3 A. She may have said that, yes.

4 Q. And in that conversation with  
5 Ms. Costa you had said that you were not  
6 going to cooperate with an investigation,  
7 did you not?

8 A. I don't recall that I said that  
9 I would not cooperate with that  
10 investigation, actually, at all. No,  
11 that's not true.

12 Q. Isn't it true that when you met  
13 with Ms. Saunders you were extremely  
14 defensive and uncooperative when she was  
15 asking you questions about Ms. Troccoli?

16 A. Yes. I met with Pat Saunders,  
17 who was supposed to be investigating a  
18 conversation that she was participating in,  
19 and I thought that that was a farce and I  
20 told her if you want to do an investigation  
21 of the acting general counsel, we should  
22 hire outside counsel. It should not be  
23 conducted by the person who was the primary  
24 witness to the conversation since she was  
25 the one engaged in the conversation, so

1 J. FISCHMAN

2 yes.

3 Q. 281 to 282. You've seen this  
4 document before, have you not?

5 A. Through your production.

6 Q. Let me just identify it. It is  
7 an e-mail communication between Ms.  
8 Costa and Mr. Fujiwara, Mr. Sakaguchi with  
9 a copy to Ms. Saunders, correct?

10 A. That's what it appears to be.

11 Q. And this is the notification to  
12 Mr. Fujiwara and Mr. Sakaguchi that there  
13 had been a complaint against you lodged by  
14 Ms. Troccoli; isn't that right?

15 A. That's what it appears to.

16 Q. The second paragraph, it says  
17 Jennifer has been complaining to Pat for  
18 some time about Kelli, including the amount  
19 of time Kelli spends out of the office.  
20 That's true is it not?

21 A. That is true, as we established  
22 earlier.

23 Q. In some cases the time is due  
24 to personal matters, in some instances it  
25 involves significant medical issues Kelli

1 J. FISCHMAN

2 has been having. That's also accurate,  
3 correct?

4 A. Yes.

5 Q. It goes on to say that Pat  
6 informed Jennifer that she needs to be very  
7 careful about complaining about or  
8 challenging Kelli's absences because  
9 failure to accommodate Kelli's medical  
10 needs could be seen as a violation of the  
11 Americans with Disabilities Act. That is  
12 also true, is it not?

13 A. That is a complete fallacy.  
14 Why would Pat Saunders, the human resources  
15 person, be advising the acting general  
16 counsel on legal advice. I was the one who  
17 was telling her that we needed to be very  
18 careful because we don't want to violate  
19 the Americans with Disabilities Act or any  
20 other law. I was the lawyer.

21 Q. So Jennifer told Pat that she  
22 consulted with outside counsel about how to  
23 avoid a claim with Kelli in connection with  
24 the ADA, that is also true, is it not?

25 A. That is true.

1 J. FISCHMAN

2 Q. 1120 and 1121. You have seen  
3 this document before, have you not?

4 A. No.

5 Q. This is an e-mail communication  
6 between Ms. Troccoli and Ms. Saunders dated  
7 October 12, 2015. 1121, are you on that  
8 page? It says, this is from Ms. Troccoli,  
9 "Miko was just out for a week. I doubt she  
10 notified you. In fact, every member of the  
11 legal department has been out sick recently  
12 and I'm sure I'm the only one she notified  
13 you of." Is that true?

14 A. You've redacted most of the  
15 e-mail, which is hard to understand the  
16 context of the e-mail, because I'm having a  
17 hard time understanding why that's redacted  
18 when it's not anybody giving legal advice,  
19 but I don't know what the context of this  
20 is. I do recall Miko getting sick at some  
21 point during the time that she worked at  
22 Mitsubishi for one week and she ended up in  
23 the hospital and everybody did know,  
24 actually, so but I don't know what this is  
25 supposed to say.

1 J. FISCHMAN

2 Q. Now with your employment law  
3 background you understood, Ms. Fischman,  
4 that investigations of a complaint are very  
5 necessary, correct?

6 MR. BERMAN: Object to form.

7 A. Yes.

8 Q. And in fact you have conducted  
9 investigations yourself, have you not?

10 A. I have.

11 Q. 942 to 945. Take a look at  
12 943. Now this is an e-mail communication  
13 between Ms. Costa and Mr. Fujiwara, Mr.  
14 Sakaguchi, with a copy to Ms. Saunders. It  
15 is dated September 1, 2015. I'm going to  
16 direct your attention to 943. It says,  
17 bottom part of the page, "Pat met with  
18 Kelli this morning and Jennifer this  
19 afternoon in attempt to gather more  
20 information. According to Pat, Jennifer  
21 interrupted Pat repeatedly and expressed a  
22 lot of outrage about being questioned." Is  
23 that accurate?

24 A. As I stated earlier, I could  
25 not understand how a legitimate

1 J. FISCHMAN

2 investigation could be done by the very  
3 person who participated --

4 Q. We have that on the record.

5 MS. COLWIN: Move to strike.

6 Q. Ms. Fischman, I'm just asking a  
7 question. Is that accurate? According to  
8 Pat, Jennifer interrupted Pat repeatedly  
9 and expressed a lot of outrage about being  
10 questioned, yes or no?

11 A. No.

12 Q. She was defensive and  
13 argumentative?

14 A. No.

15 Q. She blamed everyone but herself  
16 for the situation?

17 A. No.

18 Q. It was Ms. Costa's assessment,  
19 after receiving Ms. Saunders' feedback on  
20 her meeting with you, that an independent  
21 investigation had to be done by outside  
22 counsel, and you see that identified at the  
23 top of the page at 944, correct?

24 A. I see that she states that.

25 Q. And you would agree that

1 J. FISCHMAN

2 bringing an outside independent  
3 investigator was necessary given the  
4 circumstances? You've testified to that.

5 A. I had requested it.

6 Q. Now take a look at 943.  
7 Mr. Sakaguchi had denied the request for an  
8 independent investigator you brought in,  
9 correct?

10 A. It does look like that, yeah.

11 Q. And it was, basically the  
12 message was to work things out, correct?

13 A. It says here that our  
14 conclusion is that it's too early for MCHA  
15 to hire an outside counsel for this matter.

16 Q. You have alleged that Mr.  
17 Sakaguchi said "you girls you should work  
18 it out" but there is no mention "you girls"  
19 in this exchange; isn't that right?

20 A. Well, this isn't the e-mail  
21 that I received from Sakaguchi. Do you  
22 have that one?

23 Q. Showing you what's been marked  
24 Bates stamp 972 to 974. This is the e-mail  
25 exchange between yourself and Mr.

1 J. FISCHMAN

2 Sakaguchi, correct?

3 A. Yes, this appears to be -- it's  
4 a little hard to understand because there  
5 seems to be some part of this missing and  
6 the typeface is completely different, so I  
7 actually don't -- I don't know if this is  
8 the real document.

9 Q. The very first back page of  
10 this document, I'm sure you're familiar  
11 with metadata, this first page confirms  
12 that this is a standalone authentic  
13 business record kept at MCHA. So there is  
14 no possibility, given this metadata, that  
15 this is a document that was modified in any  
16 way.

17 MR. BERMAN: There's no  
18 question pending.

19 Q. There is in 974, 973 to 974, is  
20 Mr. Sakaguchi's e-mail to you, dated  
21 9/1/2015, in which he says I was informed  
22 there is a problem arising in MCHA among  
23 you, Kelli and Donna and the problem is  
24 escalating in the wrong direction. I would  
25 appreciate it if you would calm down and

1 J. FISCHMAN

2 try to resolve the problem internally by  
3 the discussing the issues in good faith  
4 with Donna and HR manager. I am neutral.  
5 And then it goes on to say -- you've made  
6 the accusation that Mr. Sakaguchi said to  
7 you in this exchange that he said "you  
8 girls work it out" but there's no mention  
9 of "you girls" in any of these exchanges  
10 between yourself and Mr. Sakaguchi,  
11 correct?

12 A. In this document there is not.  
13 There is however a suggestion that we  
14 should calm down, which seems to indicate  
15 that we have gotten too emotional, I guess.

16 Q. So Mr. Fischman, it doesn't say  
17 "you girls," correct?

18 A. I don't see that it says it in  
19 this e-mail.

20 Q. What document do you have in  
21 your possession, that you've produced in  
22 this litigation, where Mr. Sakaguchi says  
23 "you girls"?

24 A. As you know, I don't have any  
25 documents in my possession, Mercedes. I

1 J. FISCHMAN

2 returned all the documents to Mitsubishi  
3 with the exception of the few kind notes I  
4 received over my tenure. So this document  
5 appears to be what I was referring to, but  
6 my recollection was that he said "you  
7 girls." Perhaps there was another e-mail  
8 exchange.

9 Q. That's your guesswork on your  
10 part, isn't it?

11 A. My recollection is what it is.

12 Q. You have no evidence that there  
13 is another exchange between yourself and  
14 Mr. Sakaguchi in which he writes "you  
15 girls," correct?

16 A. Not in this e-mail, it does not  
17 say that.

18 Q. And you have no evidence, any  
19 documentary evidence of any exchange, where  
20 Mr. Sakaguchi refers to you and the other  
21 female members of MCHA legal as "you  
22 girls," correct?

23 A. I believe at the time that  
24 there was another one, because I believed  
25 at the time I complained to Donna that he

1 J. FISCHMAN

2 made -- that he sent an e-mail that spoke  
3 to that.

4 Q. Is it your testimony there's an  
5 e-mail where Mr. Sakaguchi writes "you  
6 girls." Is that your testimony?

7 A. Yeah, that's my recollection.

8 Q. And what is the basis of that  
9 recollection?

10 MR. BERMAN: Object to form.

11 A. The basis for that  
12 recollection is that I don't know that this  
13 is the only e-mail that Sakaguchi ever sent  
14 me on this matter and I again, would like  
15 to note for the record, that the typeface  
16 is completely different and on a different  
17 page than all the other e-mails that are  
18 concluded in this file, in this defense, so  
19 I'm kind of at a loss. I don't believe  
20 this document to be --

21 Q. It stands for what it is, Ms.  
22 Fischman. Those are metadata. If you  
23 want to challenge it, get an expert to  
24 challenge it, but the metadata is there.  
25 Take a look at 375 to 383. You've seen

1 J. FISCHMAN

2 this document before?

3 A. Yes.

4 Q. In fact, you created this  
5 document. This is your self assessment for  
6 your mid-year review as assistant general  
7 counsel, correct?

8 A. As acting general counsel, yes,  
9 correct.

10 Q. It's dated October 1, 2015.  
11 You believe that all the statements that  
12 you set forth in this document are  
13 accurate, correct?

14 A. Yes.

15 Q. Now Ms. Costa did not accept  
16 this, your self assessment; isn't that  
17 right?

18 A. No, she did not. Well, I  
19 actually don't know if she even reviewed  
20 it.

21 Q. Before we go to the next  
22 document, take a look at 377. You drafted  
23 this part where it says manager comments,  
24 correct?

25 A. Yes, as I had always done in

1 J. FISCHMAN

2 previous years.

3 Q. So this is your estimation of  
4 how you comported yourself as acting  
5 general counsel. "Jennifer has stepped up  
6 and has exceeded my expectations in  
7 numerous ways since assuming the role of  
8 acting general counsel and chief compliance  
9 officer." That was your estimation and  
10 that was your statement, correct?

11 A. Yes.

12 Q. 1714 to 1716.

13 MS. COLWIN: Can we just go off  
14 the record.

15 THE VIDEOGRAPHER: The time on  
16 the video monitor is 6:05 p.m. This  
17 ends Media 5.

18 (Whereupon, an off-the-record  
19 discussion was held.)

20 THE VIDEOGRAPHER: We are back  
21 on the record. The time on the video  
22 monitor is 6:08 p.m. This starts  
23 Media 6.

24 Q. You're looking at the  
25 Document 1714 to 1716. You have seen this

1 J. FISCHMAN

2 document before today, have you not?

3 A. Yes.

4 Q. And this review, you would  
5 agree with me, is vastly different than the  
6 self-assessment that you provided to Ms.  
7 Costa, correct?

8 A. That's right.

9 Q. And in this review, Ms. Costa  
10 detailed the reasons, at least five of the  
11 critical reasons why you were going to be  
12 relieved of your responsibilities as acting  
13 general counsel, correct?

14 A. Yes.

15 Q. Do you disagree with the  
16 reasons that Ms. Costa provided in this  
17 document?

18 A. Yes, emphatically.

19 Q. Detail for us the reasons why  
20 you disagree with them.

21 A. Each and every reason that she  
22 lists here is a fabrication of the true  
23 events that took place, and that's why.

24 Q. And what's the basis for your  
25 belief that this is all a fabrication?

1 J. FISCHMAN

2 A. Because they're all -- because  
3 I was involved in each and every one of  
4 them and what she states here is nothing to  
5 do with what actually happened on any of  
6 these matters.

7 Q. In this document, I'm moving  
8 away from the examples, Ms. Costa says that  
9 you did not proactively communicate with  
10 Ms. Costa on a regular basis. That is  
11 accurate, correct?

12 A. No, that's not correct.

13 Q. There are occasions where you  
14 spoke to Ms. Costa where you were combative  
15 and defensive, were you not?

16 A. I would say no, that was not  
17 true except on one occasion in August  
18 of 2015. But prior to that date, I've  
19 never been combative, defensive,  
20 argumentative or anything less than  
21 completely deferential to Ms. Costa during  
22 my entire tenure at Mitsubishi.

23 Q. So when Ms. Costa takes the  
24 stand and testifies differently and states  
25 on the record, under penalties of perjury,

1 J. FISCHMAN

2 that you were defensive and combative, she  
3 would be lying?

4 MR. BERMAN: Object to form.

5 A. Yes.

6 Q. In the 19 years that Ms. Costa  
7 was at MCHA, this is now 19 years at MCHA,  
8 you're aware that she had only terminated  
9 two individuals in the legal department --

10 MR. BERMAN: Object to form.

11 Q. -- as general counsel, Gregory  
12 Peterson and Mr. Nathan Gallup; isn't that  
13 right?

14 A. I don't have any basis to  
15 disagree with that comment. I don't know  
16 what she did before 2008. I only know  
17 Nathan Gallup was terminated during the  
18 time I was there.

19 Q. Nathan Gallup was terminated in  
20 2012 and you were at MCHA in 2012, were you  
21 not?

22 A. Yes.

23 Q. Does that refresh your  
24 recollection now that Nathan Gallup was  
25 terminated by Ms. Costa?

1 J. FISCHMAN

2 A. I think I already agreed that  
3 Nathan Gallup was terminated during my  
4 tenure in Mitsubishi but that I could not  
5 speak to anything that happened before 2008  
6 because I was not there.

7 Q. Taking a look at 1024, 1025,  
8 specifically 1025, it's an e-mail exchange  
9 between -- you've seen this document  
10 before, have you not, Ms. Fischman?

11 A. No.

12 Q. And in this e-mail exchange,  
13 Mr. Fujiwara says "as for Jennifer, I'm a  
14 bit surprised to hear that you'll be  
15 thinking of termination as I thought you  
16 had been feeling well with her as she's  
17 been trying her best to assume her new  
18 position or assignment" and that's as of  
19 August 19, 2015, correct?

20 A. Well, the document speaks for  
21 itself but it's odd because there's no  
22 e-mail that connected with this that  
23 suggests termination, so I don't know what  
24 he's referring to.

25 Q. Take a look at 1052. Do you

1 J. FISCHMAN

2 see the e-mail communication now. This is  
3 dated August 16, 2015 between Ms. Costa and  
4 Mr. Fujiwara in which she states "I'm  
5 writing to let you know that it is not  
6 going well with Jennifer and there's a  
7 chance that I will want to terminate her."  
8 Do you see that?

9 A. I do.

10 Q. 951. You've seen this document  
11 before, 951 to 952, have you not?

12 A. I think you gave it to us a few  
13 minutes ago, did you not?

14 Q. I'm asking you to take a look  
15 at it, Ms. Fischman. You've seen it  
16 before, correct?

17 A. I'm sorry, I'm a bit confused  
18 because I thought you gave this document  
19 before but the top part looks different.

20 Q. The top part is a response,  
21 another communication from Ms. Costa to  
22 Mr. Fujiwara and Mr. Sakaguchi, with a copy  
23 to Ms. Saunders. You've seen the bottom  
24 part, now it's the top part.

25 A. Why would Donna be responding

1 J. FISCHMAN

2 to herself? The bottom part is an e-mail  
3 from Donna to the same people and then  
4 she's writing --

5 Q. So is this testimony, that  
6 you're questioning the authenticity of this  
7 document?

8 MR. BERMAN: Object to form.

9 A. I'm just confused because some  
10 of the documents you produced with the  
11 metadata on it and some of them you just  
12 hand to me without any metadata, and they  
13 don't always follow congruously, so it's  
14 hard for me to --

15 Q. Look at the Bates stamp. One  
16 is 8282015, correct?

17 A. Yes.

18 Q. It's the same date of 8282015.  
19 Is it your testimony that you have never  
20 supplemented an earlier communication to  
21 the same people and used it on an e-mail  
22 chain?

23 A. What is the question that you  
24 have for me?

25 Q. On that day, Ms. Costa

1 J. FISCHMAN

2 reiterates why this particular issue  
3 involving Ms. Troccoli is another clear  
4 example of what prompted her to write, on  
5 August 16th of 2015, that she wanted to  
6 terminate you. Correct?

7 A. That's what it says.

8 Q. Take a look at 147 to 148.  
9 It's an e-mail exchange between you and  
10 Ms. Costa. 1047, 1048.

11 A. I draw your attention to 1048.  
12 Ms. Costa writes to you I'm at a loss on  
13 how to work with you and communicate with  
14 you. We need sit down after a long weekend  
15 to discuss your relationship and  
16 communication as well as your relationship  
17 with Kelli. What was your understanding as  
18 to why Ms. Costa wrote this to you?

19 A. I really don't know. We  
20 actually had just been together in a  
21 conference in California for the presidents  
22 that she had hosted, and I really didn't  
23 know what she was talking about. I knew,  
24 obviously, about the Kelli situation, and I  
25 looked forward to talking to her about

1 J. FISCHMAN

2 that. But as she says, she had a change of  
3 direction in recent e-mails, so I really  
4 didn't know what to make of this. That's  
5 why I said I'll see you Thursday and we can  
6 speak next week.

7 Q. Did you think you had a good  
8 relationship with Ms. Costa at that time,  
9 at the time that she wrote this to you?

10 A. I think that our relationship  
11 had recently been strained in the month of  
12 August and I looked forward to working on  
13 it together.

14 Q. Is there any evidence of  
15 discrimination? We've talked about the  
16 perception and the constructive feedback  
17 that you received from Ms. Costa at or  
18 around this time which should have been  
19 August of 2015. Is there any evidence of  
20 discrimination on her part towards you?

21 A. Yes. The constant  
22 discrimination of her not giving me the  
23 general counsel position and twisting  
24 things that were going on; all the positive  
25 things that I was doing in the department

1 J. FISCHMAN

2 and not acknowledging all the things that I  
3 wrote in my mid-year review, which all were  
4 true. No one ever disputed any of those  
5 things, they were all true, they were all  
6 positive.

7 So yes, I did have trouble with  
8 Kelli Troccoli, which she knew since about  
9 2008 or '9, and so having her support me  
10 was a difficult hill to climb for all of  
11 us, but the basis for her decision was  
12 still that she preferred to have a man in  
13 that position and always was that. That  
14 was why she didn't give me the full  
15 position. I was more than qualified.

16 Q. We already have on the record  
17 that there were two individuals that  
18 could've gotten that position, two men, Mr.  
19 Oliva and Mr. Sezar.

20 MR. BERMAN: Object to form.

21 Q. Correct?

22 MR. BERMAN: Object to form.

23 MS. COLWIN: You can object.

24 A. Incorrect. There's been no  
25 evidence on the record of either of those

1 J. FISCHMAN

2 two people being considered for the  
3 position that I've heard today.

4 Q. Well, it's your testimony that  
5 we're focusing.

6 A. And I can tell you that I have  
7 no knowledge of either of those two  
8 individuals ever being considered for that  
9 position except that possibly Nick had been  
10 considered in 2014. I have no idea.

11 Q. What is the basis for the sex  
12 discrimination claim you have, that you  
13 just identified, that your not getting the  
14 promotion to general counsel and just  
15 having the acting position? Is it your  
16 assumption that Ms. Costa wanted to have a  
17 man in that position? Is that your  
18 assumption?

19 A. Yes. My assumption was that it  
20 would have been easier for her, in dealings  
21 with Japan, with the individual employees  
22 of MCHC, MCC, MTPC, that it is easier for  
23 them to deal with men. On top of that, I  
24 had the discussion with her in December  
25 where she told me the Japanese didn't want

1 J. FISCHMAN

2 to deal with me. I had understood from her  
3 comments to me in that early meeting that  
4 she did not have the political capital to  
5 get me through Japan in her words.

6 Then I met with Bill Radlien,  
7 of Mitsubishi Polyester Film, in April,  
8 late April 2015, where we had dinner and  
9 cocktails, and he basically said those  
10 exact same words to me. I heard that Donna  
11 Costa expended all of her political capital  
12 getting that job herself as president and  
13 there was no way they were going to let two  
14 women run that business.

15 Q. Now there was an e-mail that  
16 you sent about that meeting with Mr.  
17 Radlien, correct?

18 A. I have no recollection.

19 Q. And you had no mention  
20 whatsoever of the comments that he had made  
21 to you during that meeting, that you have  
22 just alleged on the record today?

23 A. That would be a very insulting  
24 thing for me to say to Donna, that she had  
25 expended all of her political capital. No,

1 J. FISCHMAN

2 of course I wasn't going to say that to  
3 her. I would -- I'm trying to prove that  
4 I'm capable of doing this job, so I'm  
5 putting that to the side. I'm putting all  
6 that discrimination to the side and using  
7 my legal talents to do the job that I have  
8 been doing and that I have earned.

9 Mercedes, I was the primary  
10 breadwinner in my family. It was super  
11 important for me to keep my job. It has  
12 always been super important for me to keep  
13 my job. I have been working my entire  
14 life, as I know you have, and it is  
15 important that I kept this job. So even  
16 after I was demoted, I stayed because I  
17 needed to work to support my family.

18 Q. Ms. Fischman, this is a  
19 document that's been Bates stamped 38 to  
20 39. That first part is about the meeting  
21 that you just mentioned on the record.  
22 With Mr. Radlien, the individuals that you  
23 met up --

24 A. Yes. What's the question?

25 Q. In this exchange with Ms. Costa

1 J. FISCHMAN

2 you were talking about the meeting that you  
3 were just testifying about in which you  
4 were allegedly told that Ms. Costa had  
5 expended all her political capital to  
6 become president of MCHA and she didn't  
7 have any to elevate you to general counsel,  
8 correct?

9 A. I state here that I will give  
10 you a report on the 27th. I also said that  
11 I had good meetings with Bill and Dennis.

12 Q. It's in paragraph 56 of the  
13 complaint. You allege that during the  
14 meeting with Dennis Trice and Bill Radlien,  
15 in April of 2015, they stated that MCHA  
16 would not elevate you to general counsel  
17 because you're a female and Ms. Costa had  
18 expended all of her political capital in  
19 achieving her own promotion. You just  
20 testified that before on the record and  
21 that's what's stated in your complaint as  
22 well?

23 A. So I had two separate meetings.  
24 One was with Bill Radlien at night on my  
25 first -- when I arrived in Greer, South

1 J. FISCHMAN

2 Carolina, where he picked me up at the  
3 hotel and we had a couple of drinks in the  
4 bar and then we went to dinner where we had  
5 several more drinks, or he did, because he  
6 drinks scotch. I just had -- I probably  
7 had a glass a wine. He stated this to me  
8 over the dinner.

9 Dennis, the second day of my  
10 being in Greer, took me to lunch at his  
11 golf club, where he similarly inferred that  
12 Donna had basically kind of moved him out  
13 to get the job as president. It was the  
14 first time in the history of Mitsubishi  
15 Chemical that any woman had held the job of  
16 president of any affiliate, again  
17 worldwide, and it was a massive thing for  
18 her to do. And so they both said it in  
19 different ways but they both said it.

20 Q. The document stands for itself.  
21 It says "things are good this week!"  
22 Exclamation point, correct?

23 A. Yes, because we had other  
24 meetings there that went really well  
25 because we were talking about their new

1 J. FISCHMAN

2 line expansion, which I was going to work  
3 with them on, so yes.

4 Q. Now there came a point that Mr.  
5 Oliva was appointed general counsel,  
6 correct?

7 A. Yes.

8 Q. Prior to his appointment, you  
9 were demoted to -- you were relieved of  
10 your service as an acting general counsel  
11 and returned to your former position as  
12 assistant general counsel, correct?

13 A. On the same day.

14 Q. That was on November 11th?

15 A. November 30th.

16 Q. November 11th is the date of  
17 your review, your six-month review, that  
18 Ms. Costa reviewed with you, which we've  
19 gone through?

20 A. November 11th is the date of  
21 the review but Nick came to the -- came on  
22 the 30th of November.

23 Q. Now after Ms. Costa had met  
24 with you to tell you of this change, she  
25 had written and said that you were not

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2 happy about the change but that you acted  
3 maturely and would continue to do your job;  
4 isn't that right?

5 A. Absolutely. That's exactly how  
6 I acted and that's always how I acted. I  
7 don't know why she would be surprised.

8 Q. I'm going to show you a  
9 document, 448 to 450. This is an e-mail  
10 exchange, on the second page, between you  
11 and Ms. Costa, reflected in 449 to 450,  
12 correct?

13 A. It is e-mail exchange between  
14 -- yes.

15 Q. And in it you write that you  
16 will be taking some time to reflect on the  
17 change and how I can work to improve our  
18 relationship and restore trust, correct?

19 A. Yes.

20 Q. And you meant that, did you  
21 not?

22 A. No, not really. I meant that I  
23 wanted to keep my job, so I said things  
24 that would be kind.

25 Q. So you're saying that those

1 J. FISCHMAN

2 were untrue, that statement?

3 MR. BERMAN: Object to form.

4 A. Can you repeat what you're  
5 asking me, please?

6 Q. Let the record stand for  
7 what --

8 A. Okay.

9 Q. So on November 30th, we've  
10 established on the record that Mr. Oliva  
11 joined as general counsel and chief  
12 compliance officer at MCHA, correct?

13 A. He arrived on the 30th of  
14 December -- November, yeah.

15 Q. On December 9, 2015, you had a  
16 conversation with Mr. Oliva where you  
17 talked about his capabilities as a general  
18 counsel, did you not?

19 A. I may have asked him about his  
20 background and capabilities, yes.

21 Q. Is there anything in this page,  
22 on 854, that is inaccurate?

23 A. Yeah.

24 Q. What is inaccurate?

25 A. His opinions about offering

1 J. FISCHMAN

2 someone gum as aggressive and symbolic. I  
3 think an offering of gum is how you hand  
4 someone a blister pack -- I did have a  
5 tendency to put the gum, if I didn't have a  
6 piece of paper to put it in, but I didn't  
7 mean to gross him out. It certainly wasn't  
8 meant to be aggressive and symbolic in any  
9 way. I have no recollection of meeting  
10 with Steven about a power seat. I don't  
11 know where we met. I don't even know what  
12 the power seat is, so I disagree with his  
13 characterization of that.

14 Q. Do you know what the power seat  
15 is in Japanese culture?

16 A. Probably the head of the table,  
17 yeah, and never facing the -- also back to  
18 the door.

19 Q. So you're familiar with the  
20 power seat?

21 A. And also let the most important  
22 person come before anybody else sits down,  
23 but we weren't in a Japanese place; we were  
24 in a small office with three Americans.

25 Q. It was Japanese visitors, was

1 J. FISCHMAN

2 it not, at that meeting?

3 A. I have no recollection of who  
4 was at that meeting. If you have  
5 information that can shed some light on who  
6 was there, that'd be fine.

7 Q. Mytex, these were visitors on  
8 Mytex matter, correct?

9 A. No, I have no recollection of  
10 that.

11 Q. So you have nothing in writing  
12 that disputes what's written here by Mr.  
13 Oliva, correct?

14 A. It says met in my office  
15 about --

16 Q. That's not the the question.

17 A. It's on the same day.

18 Q. You have nothing in writing  
19 that disputes this document created by Mr.  
20 Oliva on that day?

21 A. There's nothing in this  
22 document that states that we had Japanese  
23 visitors from --

24 Q. Let me ask the question again.  
25 There's nothing in writing that you have

1 J. FISCHMAN

2 that contradicts the statements made in  
3 this document by Mr. Oliva, correct?

4 A. I have nothing in writing that  
5 contradicts this note to file.

6 Q. And 856. Before you get into  
7 that document, you knew that Mr. Oliva had  
8 previously worked at MCHA prior to coming  
9 to the company, correct?

10 A. I knew that Nick had been a  
11 paralegal at the company during law school  
12 and that he had worked just after law  
13 school.

14 Q. And you were made aware that  
15 Mr. Oliva had extensive experience in both  
16 chemical and pharma industries, were you  
17 not?

18 A. No, I was not aware of any such  
19 thing.

20 Q. You were made aware that he had  
21 managed a team of lawyers in other  
22 companies, correct?

23 A. I don't know that I was aware  
24 of that. I think that's why I asked him  
25 about his experience.

1 J. FISCHMAN

2 Q. You were made aware that he had  
3 extensive international experience also,  
4 did you not?

5 A. I knew that he had flown to  
6 China at some point to do some work there.

7 Q. Do you think that Mr. Oliva was  
8 qualified for the position of general  
9 counsel?

10 A. No.

11 Q. Why not?

12 A. I don't think that he had the  
13 depth of experience that I had. I don't  
14 think that he had as many years out of law  
15 school that I had. I don't think he went  
16 to -- I don't think he had the same  
17 pedigree that I had. I don't think in  
18 terms of the category of law school that he  
19 went to. I had never seen his writings so  
20 I really couldn't opine on that. I had  
21 seen Donna's writing many times over the  
22 course of my work with her and found her to  
23 be an excellent writer. I never once saw  
24 Nick write anything.

25 Q. So you have no basis to

1 J. FISCHMAN

2 criticize the way he communicates in  
3 writing, correct?

4 MR. BERMAN: Object to form.

5 A. Well, not on December 16th only  
6 16 days after he began working at the  
7 company. I didn't know anything about him.

8 Q. During the time that you worked  
9 together, did your opinion of Mr. Oliva  
10 change?

11 A. No, not really. I mean I liked  
12 him as a person. I mean we had a nice time  
13 the week that we were in California when I  
14 was doing ethics training and he was really  
15 quite lovely at dinner.

16 Q. That's not responsive to my  
17 question, so just move to strike.

18 A. You asked an open-ended  
19 question, so I gave you a fuller answer.

20 Q. You allege that Mr. Oliva was  
21 paid more than you, correct?

22 A. I believe he was.

23 Q. What is the basis for that  
24 allegation?

25 A. I know that he had a company

1 J. FISCHMAN

2 car paid for and I believe that he was also  
3 paid more than I was. That was just my  
4 belief. I asked for evidence of that.

5 Q. Do you think it's appropriate  
6 for an acting general counsel to make as  
7 much as a general counsel?

8 A. Yes.

9 Q. What is the basis for your  
10 belief on that?

11 A. It's the same job.

12 Q. Isn't there a grooming period,  
13 when you're acting general counsel, to  
14 become general counsel, which is the reason  
15 why you were given the acting general  
16 counsel position, to be groomed into that  
17 position, correct?

18 MR. BERMAN: Object to form.

19 A. Only when you're discriminating  
20 against the woman and putting her in the  
21 place of acting general counsel and you  
22 don't put a man through the same grooming  
23 period.

24 Q. You didn't manage a team of  
25 lawyers in other countries, correct?

1 J. FISCHMAN

2 A. No.

3 Q. You didn't have pharma  
4 experience either, did you?

5 A. The pharmaceutical business was  
6 a very small part of our business in North  
7 America. In fact, they had no products,  
8 but I did recognize the importance of  
9 pharma on a go forward basis and we were  
10 endeavoring to staff up there.

11 Q. You were present during Josh  
12 Berman's deposition, were you not?

13 A. Actually I wasn't for most of  
14 it. I had a conflict and I didn't join  
15 until very late in the deposition.

16 Q. You were made aware, were you  
17 not, that Mr. Berman disclosed, during his  
18 deposition under oath, under the penalties  
19 of perjury, that in conversations with you,  
20 you had stated that Mr. Oliva's abilities  
21 were ones that were very high as an  
22 attorney? Let me rephrase.

23 A. You'll have to show me the  
24 transcript. I didn't hear that.

25 Q. I just want to ask about your

1 J. FISCHMAN

2 recollection. You were present. We saw  
3 you on the screen and then it turned off  
4 and then you came back. You were present  
5 during the deposition and during that  
6 deposition Mr. Berman disclosed that you  
7 had regarded Mr. Oliva's abilities as  
8 significant, correct?

9 MR. BERMAN: Object to form.

10 A. I have no recollection of  
11 saying that to Josh Berman ever.

12 Q. Were you given copies of  
13 Mr. Berman's deposition?

14 A. No.

15 Q. Did you review the deposition  
16 in some other form, digital?

17 A. No. No, I didn't.

18 Q. Do you have any basis to  
19 believe that Mr. Berman testified  
20 dishonestly?

21 A. Yes.

22 Q. What? What's the basis for  
23 your belief that he lied under oath?

24 A. I think he could have -- first  
25 of all, you haven't given me his exact

1 J. FISCHMAN

2 language, so if you provide that to me,  
3 that's fine.

4 Q. I'm not asking about exact  
5 language. Ms. Fischman, let me be very  
6 clear of my question. Do you have a basis  
7 to believe that Mr. Berman lied under oath  
8 during his deposition?

9 A. No.

10 Q. Did you have a meeting with Ms.  
11 Saunders on December 17, 2015, do you  
12 recall?

13 A. No, I have no recollection of  
14 that.

15 Q. Do you recall saying to Ms.  
16 Saunders, during a meeting in December of  
17 2015, that you did not intend to keep Mr.  
18 Oliva apprised of the work that you were  
19 working on?

20 A. No, I have no absolutely  
21 recollection of that. That is -- I have no  
22 idea what you're talking about.

23 Q. And you have no documents that  
24 would refresh your recollection as to this  
25 meeting, correct?

1 J. FISCHMAN

2 A. I don't know that the meeting  
3 even took place.

4 Q. You have no independent  
5 recollection that the meeting took place,  
6 period?

7 A. I don't.

8 Q. Now during the time that Mr.  
9 Oliva started as general counsel, you had  
10 requested time to work from home, isn't  
11 that right?

12 A. I did.

13 Q. And at the time, no one in the  
14 legal department with a full-time schedule  
15 was actually working from home on a regular  
16 scheduled basis, correct?

17 A. Katherine Roach had always been  
18 working from home on a regular basis since  
19 the time I began working at the company.

20 Q. But you've testified under oath  
21 and it's pretty well established that Ms.  
22 Roach did not work a full-time schedule;  
23 isn't that right?

24 A. That's right.

25 Q. Now nevertheless, although

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J. FISCHMAN

there was no set policy in the legal department in MCHA to work from home, Mr. Oliva had agreed to work with you to meet your needs, did he not?

A. He did because I was having some very serious emotional distress that was compounded by coming to the office every single day and the humiliation that I was feeling by having gone through this situation. So I requested, of my direct report, that I be accommodated for my mental and emotional state.

MS. COLWIN: Can we just go off the record for a minute.

THE VIDEOGRAPHER: The time on the video monitor is 6:52 p.m. we are off the record.

(Whereupon, an off-the-record discussion was held.)

(Whereupon, at 7:00 P.M., the Examination of this witness was adjourned.)

° ° ° °

J. FISCHMAN

D E C L A R A T I O N

I hereby certify that having been  
first duly sworn to testify to the truth, I  
gave the above testimony.

I FURTHER CERTIFY that the foregoing  
transcript is a true and correct transcript  
of the testimony given by me at the time  
and place specified hereinbefore.

-----  
JENNIFER S. FISCHMAN

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

-----  
NOTARY PUBLIC

J. FISCHMAN  
E X H I B I T S

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PAGE LINE QUESTION

(None)

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J. FISCHMAN

C E R T I F I C A T E

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

I, ENRIQUE ALVARADO, a Notary Public  
for and within the State of New York, do  
hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and  
that such examination is a true record of  
the testimony given by that witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or by marriage and that I  
am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 22nd day of June 2021.



-----  
ENRIQUE ALVARADO



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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

JENNIFER S. FISCHMAN,

Plaintiff,

Index No.

-against-

18-CV-08188

MITSUBISHI CHEMICAL HOLDINGS AMERICA,  
INC.; MITSUBISHI CHEMICAL HOLDINGS  
CORPORATION; NICOLAS OLIVA, in his  
individual and professional capacities;  
DONNA COSTA, in her individual and  
professional capacities; and JOHN DOES  
1-10, in their individual and  
professional capacities,

Defendants.

-----x

June 28, 2021

10:09 a.m.

June 28, 2021

10:09 a.m.

Continued videotaped deposition of  
JENNIFER FISCHMAN, held at the offices of Gordon  
Rees Scully Mansukhani LLP, One Battery Park  
Plaza, New York, New York, pursuant to Notice,  
before Lynne D. Metz, a Shorthand Reporter and  
Notary Public of the State of New York.

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Rocco Mercurio - videographer

Nicolas Oliva

Donna Costa

Skyler Stern - intern

Adriana Acosta - intern

1  
2 THE VIDEOGRAPHER: We are now going on  
3 the record. Today is June 28, 2021 at  
4 approximately 10:09. This is the video  
5 deposition of Jennifer S. Fischman volume  
6 two in the matter of Fischman versus  
7 Mitsubishi Chemical Holdings America, Inc.  
8 filed in the Southern District Court of New  
9 York case number 18-CV-08188.

10 My name is Rocco Mercurio and the  
11 court reporter is Lynne Metz.

12 Will counsel please introduce  
13 yourselves and who you represent.

14 MR. BERMAN: For plaintiff Matthew L.  
15 Berman and I am joined today by my  
16 colleagues Sara Wyn Kane and Robert Valli,  
17 Jr.

18 MS. COLWIN: Mercedes Colwin for MCHA,  
19 Donna Costa and Nicolas Oliva and with me is  
20 my colleagues Brittany Primavera, Skyler  
21 Stern and Adriana Acosta.

22 MR. FORTINSKY: Jerry Fortinsky with  
23 Shearman and Sterling for defendant  
24 Mitsubishi Chemical Holdings Corporation and  
25 with me is my colleague Sam Jolly.

1 J. Fischman

2 MS. GUERON: Nicole Gueron with  
3 Clarick Gueron Reisbaum and I represent  
4 Donna Costa.

5  
6 J E N N I F E R F I S C H M A N,  
7 having been previously sworn, resumed the  
8 stand and testified further as follows:

9 EXAMINATION (Cont'd)

10 BY MS. COLWIN:

11 Q. Good morning Ms. Fischman.

12 A. Good morning Mercedes.

13 How are you?

14 Q. I am good thank you.

15 So we are going to continue your  
16 deposition. I just have some questions. I will  
17 begin with my first question. I am going to  
18 direct your attention to March 3, 2016. Mr. Oliva  
19 had met with you on that date to see how you were  
20 doing.

21 Do you recall that date and that  
22 meeting?

23 MR. BERMAN: Object to form.

24 A. I think I could use some refresher  
25 about what you are talking about.

1 J. Fischman

2 Q. Sure.

3 MS. COLWIN: I ask that Bates 864 to  
4 865 be shown to the witness please. Let's  
5 mark this as Fischman Exhibit 1.

6 (Fischman Exhibit 1, a document  
7 Bates stamped 864 to 865, marked for  
8 identification, as of this date.)

9 Q. Ms. Fischman, if you could just take a  
10 look briefly at the two-page document Bates  
11 stamped 864 to 865.

12 A. Yes.

13 Q. Does that refresh your recollection as  
14 to the meeting that you had with Mr. Oliva?

15 A. It refreshes a meeting that I had. I  
16 can't state as to when that occurred but  
17 definitely remember the meeting.

18 Q. There are statements made in this  
19 document.

20 Could you take a look at this and  
21 review it to see if there is any inaccuracies?

22 A. So these are Nick's notes based on a  
23 conversation that he and I had on that date. I  
24 remember generally having this conversation with  
25 him and I do remember parts of the conversation,

1 J. Fischman

2 but...

3 Q. But my question Ms. Fischman, were  
4 there any inaccuracies?

5 A. I would say that there is some. Yes.  
6 I would say that there are inaccuracies.

7 Q. Point out where they are?

8 A. I am at the point -- his conclusions  
9 about --

10 Q. No, just --

11 A. -- what I am saying.

12 So on page 864 his parenthetical  
13 alluding to my quitting but refusing to say the  
14 word, I don't recall ever feeling that I was going  
15 to quit.

16 Q. Okay, go on.

17 A. I recall definitely saying that the  
18 environment was a toxic one. The office felt  
19 toxic to me.

20 Q. Ms. Fischman, if you could do me a  
21 favor, just point out the inaccuracies and I am  
22 going to go back on this first point that you made  
23 in a moment.

24 A. Okay. I do recall saying that on page  
25 865 I do recall saying that for my mental health I

1 J. Fischman

2 was requesting two days a week to work from home.

3 Q. That's not what it says. I am asking  
4 for --

5 A. So it says -- so while he says in his  
6 parenthetical on line two quote, not mental health  
7 in parenthetical. So that's incorrect. It was  
8 for my mental health.

9 Q. Anything else?

10 A. Again, line one, two, three, four,  
11 five he said "I asked if she meant leaving the  
12 company. She implied so, no. I never implied  
13 so." So that's incorrect.

14 I don't know what a Yuka issue is. So  
15 that line 6 I don't know what that is.

16 I think that in general the last --  
17 where he says I asked what the underlying reason  
18 is several times, she says Kelli. Then says and  
19 the environment. I dig deeper. She says Kelli.  
20 She says that I don't need to know why. I don't  
21 recall saying all of that.

22 He then says in parenthetical on the  
23 last two lines what Jennifer seems to  
24 misunderstand. He again, is trying to read my  
25 mind. So I don't know where that comes from. So

1 J. Fischman

2 that would be incorrect. And that's it.

3 Q. Do you recall working on project Haru  
4 in 2016?

5 A. Sometimes the project names are,  
6 escape me. So if you could hand me a document  
7 that might refresh my memory.

8 Q. 1102 to 1103.

9 MS. COLWIN: Please mark this as  
10 Fischman Exhibit 2 a document Bates stamped  
11 1102 through 1103.

12 (Fischman Exhibit 2, a document  
13 Bates stamped 1102 through 1103, marked for  
14 identification, as of this date.)

15 Q. Have you had a chance to review that  
16 document? Does that refresh your recollection  
17 about project Haru?

18 A. Briefly, yes.

19 Q. Did it surprise you to hear that they  
20 were concerned about your involvement in the  
21 project?

22 A. Yes.

23 MS. COLWIN: I would like to mark as  
24 Fischman Exhibit 3 a document Bates stamped  
25 590 to 599.

1 J. Fischman

2 (Fischman Exhibit 3, a document  
3 Bates stamped 590 to 599, marked for  
4 identification, as of this date.)

5 Q. Can you take a look at 590 to 599?

6 A. I know this document.

7 Q. I am sorry?

8 A. I know this document.

9 Q. So this is the review that you  
10 received from Mr. Oliva; is that right?

11 A. Yes.

12 Q. And that captures the time you were  
13 the acting general counsel; is that right?

14 Assistant general counsel, do you see  
15 that on the very top in the front?

16 A. Mm-hmm.

17 Q. April 30, 2016 take a look at page  
18 595.

19 That is your signature, is it not?

20 A. Yes.

21 Q. And that is signed and dated May 24,  
22 2016; correct?

23 A. Mm-hmm.

24 Q. Right above that there is a  
25 typewritten portion which is section five Employee

1 J. Fischman

2 Comments; correct? It starts at 594 at the very  
3 bottom and these are your comments above that  
4 typewritten; correct, in terms of it starts "The  
5 2015 fiscal year was a good and challenging year."

6 Is that right?

7 A. Yes.

8 Q. Is there any evidence of  
9 discrimination related to the criticisms that are  
10 set forth in your work --

11 MR. BERMAN: Object to form.

12 Q. -- in this document?

13 A. Could you repeat the question?

14 (Record read.)

15 MR. BERMAN: Object to form.

16 A. Yes.

17 Q. Where is that in the document?

18 A. Well, it is not something that I would  
19 have written in the document because this document  
20 is submitted to my boss for his review and --

21 Q. Ms. Fischman that's not the question.

22 A. Actually, that's the answer. You  
23 asked me to answer the question.

24 Q. Where is it in writing? I am not  
25 asking for the reason.

1 J. Fischman

2 Where is it in writing in this  
3 document that you felt evidence of discrimination?

4 A. Well actually, there is evidence of  
5 retaliation, if you must know. It's in the Needs  
6 Improvement on the level of proficiency on page  
7 592 which I had never received before and that was  
8 in retaliation for comments that I had made to  
9 Nick Oliva on or about March 1st when we had a  
10 discussion about the dismissal of Amber Todd.

11 Q. So it is your statement under oath  
12 that the fact that you received a needs  
13 improvement in communication was for retaliatory  
14 motive by Mr. Oliva; is that your testimony?

15 A. Yes.

16 Q. And that stems from a conversation  
17 that was had regarding Miss Amber Todd?

18 A. Yes.

19 Q. If you could, to the best of your  
20 recollection, state for the record under oath what  
21 the conversation you had with Mr. Oliva regarding  
22 Miss Amber Todd in March of 2016?

23 A. Two things Mercedes. I am a lawyer.  
24 You don't need to remind me that I am under oath.  
25 So please don't do that.

1 J. Fischman

2 Secondly --

3 Q. It is my deposition Ms. Fischman and I  
4 am being very respectful.

5 A. But I find that very disrespectful. I  
6 know I am under oath. She just reminded me of it,  
7 okay. Under oath I state that when I returned  
8 from vacation in early March, I believe it was  
9 March 1st, we had a conversation about the  
10 termination of Amber Todd, a woman who worked at  
11 one of our affiliates for who we supported with  
12 legal advice. Dan Todd had previously worked at  
13 the company back in the Fall of 2015. Dan Todd  
14 left the company and he received a very generous  
15 year long severance package. When Amber -- the  
16 company was closing down or winding down its  
17 operations and when Amber Todd identified that she  
18 was ready to leave the company the company said  
19 they would not give her a severance package. All  
20 of this occurred in early February of 2016.

21 I went on vacation with my family in  
22 mid to late February and when I returned Mr. Oliva  
23 told me that the company was not going to give  
24 Amber a severance package but instead was going to  
25 fire her for cause because there was a conflict

1 J. Fischman

2 now that her husband worked for a customer of the  
3 company. So I said to Nick that that was  
4 inappropriate and that I was not going to paper  
5 any record as he had suggested and we got into  
6 quite a -- we got into a strongly worded  
7 conversation where he was angry with my response  
8 and I did not want to do anything that I thought  
9 was inappropriate and I told him that I thought it  
10 was discrimination against Amber and that they had  
11 treated her male husband quite differently and  
12 that it was absolutely wrong and I wouldn't  
13 support it. He immediately changed the subject,  
14 walked out of my office and I was very shaken from  
15 that experience.

16 Q. What, if anything, exists in writing  
17 that details this conversation that you had with  
18 Mr. Oliva?

19 A. On that night I went home and I wrote  
20 myself a note on a legal pad and I stuffed it in a  
21 draw and hoped to forget about it.

22 Q. Have you produced that?

23 A. Yeah. That was, remember last week  
24 when I said there were a bunch of handwritten  
25 documents that I thought had been produced. We

1 J. Fischman

2 have now produced everything.

3 MR. BERMAN: I will represent to  
4 counsel those were produced.

5 Q. Ms. Fischman, we have been in this  
6 controversy for quite a number of years.

7 Why is it that you just produced this  
8 document to your counsel and then in turn  
9 allegedly produced to us?

10 MR. BERMAN: Object to form.

11 A. I thought I had produced everything  
12 and I went back and when I was preparing for this  
13 deposition I went back and searched another part  
14 of my bedroom office and found a couple of more  
15 documents. Not just this, but I also found a  
16 notebook that I had kept.

17 Q. You perceive this document as a  
18 critically important document to your claim;  
19 correct?

20 MR. BERMAN: Object to form.

21 A. Of course.

22 Q. How is it that --

23 A. It is the basis for which I used for  
24 the complaint.

25 Q. Ms. Fischman, let me finish.

1 J. Fischman

2 How is it that we are in 2021 and now  
3 for the first time you have given this document to  
4 your counsel who then gave it to us?

5 MR. BERMAN: Object to form.

6 A. I don't know how to answer that. I  
7 found a couple of extra documents that I thought I  
8 already produced it a year ago actually.

9 Q. The circumstances regarding Mr. Todd  
10 and Miss Todd are very different.

11 Mr. Todd was subject to a reduction in  
12 force, was he not?

13 MR. BERMAN: Object to form.

14 MS. COLWIN: What's the objection to  
15 the form counsel?

16 MR. BERMAN: You provided a prequel to  
17 the question. So that was two questions or  
18 one was a statement and one was a question.

19 BY MS. COLWIN:

20 Q. Mr. Todd was subjected to a reduction  
21 in force, was he not?

22 A. I think the whole company was subject  
23 to --

24 Q. I am not asking you that question. I  
25 am asking you a question Ms. Fischman.

1 J. Fischman

2 Mr. Todd was subject to reduction in  
3 force, was he not?

4 A. No.

5 Q. Do you have something in writing to  
6 state that he wasn't subject to reduction in  
7 force?

8 A. All of the documents that I have are  
9 in the possession of your client.

10 Q. Miss Todd was not subject to a  
11 reduction of force, was she?

12 MR. BERMAN: Object to form.

13 A. I don't believe either one of them  
14 were subject to a reduction in force.

15 Q. Did you make any -- withdrawn.

16 There is no evidence that you had this  
17 discussion about this conversation with anyone  
18 within MCHA, did you?

19 MR. BERMAN: Object to form.

20 A. Yes. I had this discussion with Nick  
21 Oliva.

22 Q. I am talking about the discussion you  
23 had with Mr. Oliva.

24 You spoke to no one else at MCHA  
25 regarding this discussion; correct?

1 J. Fischman

2 A. I can't recall. I may have had a  
3 discussion with Steven Rose.

4 Q. Do you have anything in writing about  
5 subsequent discussion you had with someone at MCHA  
6 regarding this discussion you had with Mr. Oliva?

7 A. There may be e-mails between me and  
8 Yvonne Bienami. There might be e-mails between  
9 she and I about this.

10 Q. Shifting gears to Genomatica.  
11 You were general counsel to  
12 Genomatica, were you not?

13 A. Yes.

14 Q. Josh Berman worked with you as your  
15 outside counsel; correct?

16 A. He did.

17 Q. Your client was MCC, was it not?

18 A. Yes.

19 Q. And your contact at MCHJ was Tomoji  
20 Minami; correct?

21 A. Yes.

22 Q. And Mr. Takimoto was the business unit  
23 leader for MCC; correct?

24 A. Yes.

25 Q. You were given instructions about this

1 J. Fischman

2 litigation from Mr. Oliva, were you not?

3 A. Mr. Oliva and I discussed this  
4 litigation many times. You would have to be more  
5 specific.

6 Q. Well, he gave you instructions on how  
7 to handle the litigation overall, did he not?

8 A. Well, I was in the litigation for two  
9 and a half years before Mr. Oliva joined the  
10 company.

11 Q. He gave you -- so didn't he say to you  
12 that this litigation for MCC was very important?

13 A. We had always discussed the importance  
14 of this litigation, yes.

15 Q. So the answer is yes; correct Ms.  
16 Fischman?

17 A. I am not sure that he instructed me.  
18 I had been running the case for many years before  
19 he arrived on the scene. So I was well aware of  
20 its importance. I don't believe --

21 Q. I am talking about -- Ms. Fischman,  
22 listen. We have a short period of time. Let's  
23 get through this and you know let's go through  
24 this and let's go through this. I am not going to  
25 speak over each other. Don't interrupt my

1 J. Fischman

2 questioning. Let's just move on.

3 Mr. Oliva told you it was very  
4 important litigation because MCHA's legal  
5 department, and you in particular, could shine  
6 with this client and be a resource for MCC in the  
7 future.

8 Did he not say that to you?

9 MR. BERMAN: Object to form.

10 Q. Yes or no?

11 A. I don't believe he said those words to  
12 me, no.

13 Q. Did he not say to you that it was  
14 going to be a great opportunity for you to shine  
15 with this particular client so that you could be a  
16 resource for MCC that was going to be global at  
17 some point?

18 A. I would say I was well aware of the  
19 importance of the lawsuit because I had been  
20 working for this company for eight years by this  
21 point and I always treated them with great respect  
22 and reverence. So I knew of the importance of MCC  
23 and I also knew of Mr. Takimoto's importance.

24 Q. And you understood that Genomatic --  
25 with respect to this particular litigation you

1 J. Fischman

2 understood that Genomatica basically ignored MCC  
3 for about two years; is that correct?

4 MR. BERMAN: Object to form.

5 A. What was the question?

6 Q. You knew that Genomatica had --  
7 Genomatica and MCC had a difficult situation where  
8 MCC was basically ignored by Genomatica which  
9 resulted in this breach of contract?

10 MR. BERMAN: Object to form.

11 A. Are we going back to the basis for the  
12 lawsuit?

13 Q. I am talking about the instructions  
14 that you understood na there was a difficult  
15 strained relationship between Genomatica and MCC.

16 Genomatica had essentially ignored MCC  
17 for about two years; correct?

18 MR. BERMAN: Object to form.

19 A. Genomatica had taken a great deal of  
20 money from Mitsubishi Chemical.

21 Q. The answer is yes or no. If you don't  
22 know I am going to move on.

23 MR. BERMAN: Object to form.

24 A. I believe the question ignores the  
25 fact we were in litigation. So yes, of course

1 J. Fischman

2 there were a strained relationship between these  
3 former contracted companies, yes.

4 Q. Weren't you instructed by Mr. Oliva  
5 that it was essential that MCC be kept updated  
6 with any developments within the litigation?

7 MR. BERMAN: Object to form.

8 A. I spoke with MCHJ and MCC on an  
9 absolute regular basis. Sometimes more than three  
10 or four times a week. It was a very active case.

11 Q. And you understood how important it  
12 was as lead counsel to keep your client MCC  
13 updated; correct?

14 A. Yes.

15 Q. Who did you seek approval from at MCC,  
16 was that Mr. Minami and Mr. Takimoto?

17 A. Approval for what?

18 Q. Any strategic measure that you were  
19 going to take in litigation.

20 A. There were different levels of people  
21 that we would speak to.

22 So am I allowed to give a fuller  
23 explanation or do you just want a yes or no  
24 answer?

25 Q. I am just asking who are the

1 J. Fischman

2 individuals or your point people? If there was a  
3 strategic decision to be made, who were your point  
4 individuals at MCC?

5 A. So I would say there were a few  
6 different people that we spoke to on a regular  
7 basis. There was first Takibondo. Then there was  
8 Utsin Myama (phonetically). I can't remember  
9 exactly how to pronounce his name, but it starts  
10 with a U-T-S. Then there was Tomoji Minami and  
11 then ultimate control over everything was Takimoto  
12 San. You can leave the San off. Takimoto.

13 Q. Mr. Takimoto was the same individual  
14 that had raised concerns about your involvement in  
15 project Haru; correct? That was the document that  
16 you just --

17 A. I was unaware of that. It was never  
18 shared with me.

19 Q. But you saw that document in front of  
20 you that's Bates stamped 1102 and 1103; correct?

21 A. I have seen the document so I assume  
22 it is correct but I can't speak to its  
23 authenticity nor can I speak to -- I never saw it.

24 MS. COLWIN: 1419 through 1421 please  
25 mark as Fischman Exhibit 4.

1 J. Fischman

2 (Fischman Exhibit 4, a document  
3 Bates stamped 1419 through 1421, marked for  
4 identification, as of this date.)

5 Q. Were you aware that Mr. Minami raised  
6 concerns about the way you were handling the case?

7 A. No. I was not aware at all.

8 MS. COLWIN: Let's mark 876 and 877 as  
9 Fischman Exhibit 5.

10 (Fischman Exhibit 5, a document  
11 Bates stamped 876 and 877, marked for  
12 identification, as of this date.)

13 Q. Were you aware that Mr. Minami  
14 expressed discomfort regarding your handling of  
15 the Genomatica litigation on 10/23/2016 as  
16 reflected in the document 876, 877?

17 A. I was aware about this particular  
18 small incident. And what I would like to explain  
19 is that it was only a matter of a few days between  
20 my e-mail to Tomoji letting him know that the  
21 judge had retired. So it was the judge had  
22 retired in mid-October 2016 and by, within a week  
23 we barely had learned that he had retired and that  
24 the ENE was cancelled and within the same week  
25 they said that they had passed it to a new judge

1 J. Fischman

2 and an ENE had been scheduled. So it was not --  
3 there was a very short period of time between the  
4 two incidents and that was the explanation for not  
5 letting Tomoji know that the judge had retired.  
6 In fact, I am not sure how aware I was of it. It  
7 was something that Josh knew about and we were  
8 sort of scrambling to figure out that implications  
9 of it before speaking to Japan.

10 MS. COLWIN: Take a look at 1842 to  
11 1847 which we will mark as Fischman Exhibit  
12 6.

13 (Fischman Exhibit 6, a document  
14 Bates stamped 1842 to 1847, marked for  
15 identification, as of this date.)

16 A. Okay.

17 Q. This pertains to the settlement  
18 conference; correct?

19 A. This is pertaining to the yes, we will  
20 call it the settlement conference between -- in  
21 front of the judge called an ENE.

22 Q. And you understood the settlement  
23 conference needed a certain level of authority to  
24 settle; correct?

25 A. Yes.

1 J. Fischman

2 Q. And you understood that it wasn't from  
3 that document you can see it was not whether who  
4 was going, it was whether MCC would attend or  
5 someone from MCHJ would attend; is that correct?

6 MR. BERMAN: Object to form.

7 Q. You are aware from that document that  
8 it was a decision between whether someone from MCC  
9 would attend versus someone from MCHJ; correct?

10 A. Correct. It was --

11 Q. Let me point your attention at 1844.  
12 It says Dear Jennifer. This is from Mr. Minami  
13 "Regarding the person who has the authority to  
14 settle the case, I believe Takimoto San should be  
15 the person, but he is now on a business trip to  
16 abroad. We will discuss internally next week  
17 whether Takimoto San will be able to attend the  
18 conference or MCC appoints MCHA as its  
19 representative with authority, in addition to the  
20 settlement terms we can accept/compromise."

21 Do you understand that?

22 A. Yes.

23 Q. So it is clear from this particular  
24 communication from Mr. Minami to you that it is  
25 either someone from MCC in particular Mr. Takimoto

1 J. Fischman

2 or someone from MCHJ who they would select;  
3 correct?

4 A. Yes.

5 Q. Is there any evidence of  
6 discrimination that, according to you, that with  
7 respect to the who they selected for the  
8 conference?

9 MR. BERMAN: Object to form.

10 A. Yes.

11 Q. What is the evidence of  
12 discrimination?

13 A. That they chose Nick for this to  
14 attend the settlement conference when I was the  
15 lead attorney on the case and had been so for two  
16 and a half years before he arrived on the scene  
17 and when I turned to Nick, when he stood in my  
18 office and we discussed it, I said it's evidence  
19 of the misogynistic culture of this company that  
20 they chose you and not me.

21 Q. Ms. Fischman, I've already shown you  
22 two separate documents from MCC they had concerns  
23 about the way that you were handling the case.

24 You saw this. They are in front of  
25 you. They are in that pile; correct?

1 J. Fischman

2 MR. BERMAN: Object to form.

3 Q. Yes or no?

4 A. No. I mean you keep asking me yes or  
5 no questions.

6 Q. Because it is a yes or no.

7 A. I can't answer everything in a yes or  
8 no question. I think it requires an explanation.

9 Q. Ms. Fischman, if there is an  
10 explanation to be had, you have three counsel  
11 across from me. They can certainly ask you but I  
12 am asking you a very direct question.

13 You have in front of you documents  
14 that clearly showed there were concerns about the  
15 way you were handling Genomatica; correct?

16 MR. BERMAN: Object to form.

17 A. I have documents in front of me that I  
18 was not aware of and nobody had ever told me about  
19 these concerns.

20 Q. So we are clear right now, Mr. Oliva  
21 was the one who covered that settlement conference  
22 after there were concerns raised about the way you  
23 were handling Genomatica; correct?

24 MR. BERMAN: Object to form.

25 A. Mr. Oliva was chosen to go to the ENE

1 J. Fischman

2 because he was a man and --

3 MO MS. COLWIN: Move to strike.

4 A. -- and they didn't want a woman to  
5 meet with the male judge, the male opposing  
6 counsel and our male outside counsel.

7 Q. Ms. Fischman, I am going to move to  
8 strike. You didn't answer my question.

9 The question is: Mr. Oliva was  
10 selected for this settlement conference after  
11 there had been concerns raised about the way you  
12 were handling Genomatica; yes or no?

13 MR. BERMAN: Object to form.

14 A. No. Because I don't know the answer  
15 as to why they chose him except that --

16 Q. You already answered my question. We  
17 are moving on.

18 MS. COLWIN: Take a look at 1907 to  
19 1908 which we will mark as Fischman Exhibit  
20 7.

21 (Fischman Exhibit 7, a document  
22 Bates stamped 1907 to 1908, marked for  
23 identification, as of this date.)

24 MS. COLWIN: Please mark as Fischman  
25 Exhibit 8 a document Bates stamped 2301

1 J. Fischman

2 through 2302.

3 (Fischman Exhibit 8, a document  
4 Bates stamped 2301 through 2302, marked for  
5 identification, as of this date.)

6 Q. I am showing you what has been marked  
7 as 1907 to 1908 and 2301 and 2302.

8 This is an e-mail communication  
9 between you and Mr. Oliva?

10 A. Mm-hmm.

11 Q. Pertaining to a document that you or a  
12 communication that you were going to send to  
13 opposing general at Genomatica; correct?

14 A. Yes.

15 Q. And you were seeking Mr. Oliva's  
16 feedback on this communication that you were  
17 proposing to send to opposing counsel; correct?

18 A. Yes.

19 Q. You wanted to make sure that the tone  
20 and the content was consistent with the strategy  
21 that you had spoken to with Mr. Oliva?

22 A. Yes.

23 Q. You wanted to make sure that the  
24 hostility was kept in check?

25 A. Yes. That's what the e-mail says.

1 J. Fischman

2 MS. COLWIN: Mark this as Fischman  
3 Exhibit 9 a document Bates stamped 882 to  
4 883.

5 (Fischman Exhibit 9, a document  
6 Bates stamped 882 to 883, marked for  
7 identification, as of this date.)

8 Q. Ms. Fischman, I am showing you 882 to  
9 883. It starts on the second page communication  
10 regarding the settlement offer of 2.5 written to  
11 you by your outside counsel Mr. Berman. And in  
12 the very top that's Mr. Oliva's response to you.  
13 He writes "Isn't that asking for everything and  
14 not settlement."

15 You see that; correct?

16 A. Yes. On December 29th we had e-mail  
17 correspondence because I was home sick with the  
18 flu and we decided we would discuss it in the  
19 office.

20 MO MS. COLWIN: I am not even asking that  
21 so I will move to strike.

22 Q. At the very top of 882 it says  
23 "Thanks. Isn't that asking for everything and not  
24 settlement?"

25 Do you see that from Mr. Oliva?

1 J. Fischman

2 A. I do see that, yes.

3 Q. And you understood that to be his  
4 feedback pertaining to the offer that was, you  
5 were communicating to him?

6 A. That was his feedback on December 29th  
7 at 2:12 p.m.

8 MS. COLWIN: Please mark as Fischman  
9 Exhibit 10 a document Bates stamped 884  
10 through 886.

11 (Fischman Exhibit 10, a document  
12 Bates stamped 884 through 886, marked for  
13 identification, as of this date.)

14 Q. Are you familiar with this e-mail, you  
15 see that; correct?

16 A. I learned of this e-mail during the  
17 course of this litigation; correct.

18 Q. I am going to page 85. I am not going  
19 to 884 just yet. In that e-mail this is your  
20 e-mail to Mr. Minami in response to his e-mail  
21 below.

22 Do you see that?

23 A. Yes.

24 Q. In that e-mail, this is January 5,  
25 2017, you write to Mr. Minami, "Thank you for your

1 J. Fischman

2 e-mail. We are still discussing the offer among  
3 Josh, Nick and myself and we are not ready to  
4 respond with a counter proposal."

5 A. Yes.

6 Q. "We will send you our recommendation  
7 as soon as possible."

8 Correct?

9 A. Yes. That's what I wrote at 7:14 in  
10 the morning or --

11 Q. I am not asking that.

12 A. -- or 7:14 at night depending on  
13 whether it is Japan time or US time.

14 Q. Ms. Fischman, as of January 5, 2017  
15 you specifically told your client representative  
16 at MCHJ that you were not ready at that point with  
17 a counterproposal to opposing counsel; correct?

18 A. Because of the time difference between  
19 Japan and US.

20 Q. Are you answering my question Ms.  
21 Fischman or are you going to answer a question  
22 that's not --

23 A. I am answering your question.  
24 Mercedes --

25 Q. My question was very clear.

1 J. Fischman

2 As of January 5, 2017 you specifically  
3 wrote to your client representative Mr. Minami  
4 that you were not ready with a counterproposal  
5 because it was still being discussed internally;  
6 correct?

7 MR. BERMAN: Object as to form,  
8 ambiguous as to time and whether it is Japan  
9 or US.

10 MS. COLWIN: Are you testifying Mr.  
11 Berman? Then we will get your --

12 MR. BERMAN: You mean US or Japan?

13 MS. COLWIN: Objection to form. You  
14 don't need to coach your witness.

15 MR. BERMAN: She's already provided a  
16 response. You repeated your question in an  
17 ambiguous form. So please clarify your  
18 question.

19 MS. COLWIN: Object to question and  
20 move on Mr. Berman.

21 BY MS. COLWIN:

22 Q. Ms. Fischman, I am asking a very  
23 simple question.

24 As of January 5, 2017 you were not  
25 ready to send a counterproposal to Genomatica as

1 J. Fischman

2 reflected in this e-mail; yes or no?

3 A. I am unable to answer that question as  
4 posed because it requires an explanation as to the  
5 time.

6 Q. What is your best recollection as the  
7 time of this e-mail to Mr. Minami on January 5,  
8 2017?

9 A. My best recollection of the time of  
10 this e-mail was that it was either the night  
11 before January 5th which would be January 4th or  
12 very early in the morning on January 5th before I  
13 had spoken with Nick Oliva.

14 Q. So it is your best recollection that  
15 you may have had a discussion with Mr. Oliva?

16 A. It is more than the best recollection.

17 Q. Let me finish. I didn't finish my  
18 question.

19 Is it your best recollection Ms.  
20 Fischman, you had a conversation with Mr. Oliva  
21 before you sent this e-mail to Mr. Minami?

22 A. No. It is my best recollection that I  
23 had a discussion with Nick Oliva after I sent this  
24 e-mail to Tomoji.

25 Q. There is no communication that exists

1 J. Fischman

2 after this January 5, 2017 e-mail to your clients  
3 at MCC pertaining to the offer that was actually  
4 made to Genomatica; correct?

5 A. Incorrect.

6 Q. What written document do you have that  
7 sets forth an e-mail from you to your client that  
8 you were going -- that an offer was being made?

9 A. To be very clear --

10 Q. It is a very clear question.

11 What document do you have?

12 A. So the document -- there is no  
13 document until later in the month, but may I  
14 please answer the question because you are asking  
15 for -- you only want part of the story and the  
16 fact of the matter is is that on January 5th Nick  
17 Oliva and I had a conversation in his office at  
18 approximately 11:15 a.m. where she and I discussed  
19 the offer. She suggested we come down to 2.2  
20 million. I said I don't think we need to go down  
21 to 2.2. I think 2.3 is the right number. He  
22 agreed. I then went back to my office. I called  
23 Josh or Josh called me. I can't recall who called  
24 whom. I told him that was the number. I then  
25 went home sick. Over the weekend I received a

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J. Fischman

text or an e-mail from Donna Costa saying that Mr. Takimoto was going to be in the office on Tuesday where upon Nick Oliva and I met with the client, the head of the company, the person responsible for this and we discussed the offer and the strategy for this case.

MS. COLWIN: Take a look at 2322 and we will mark that as Fischman Exhibit 11.

(Fischman Exhibit 11, a document Bates stamped 2322, marked for identification, as of this date.)

Q. This is Mr. Berman your outside counsel writing to you on January 5, 2017 where he says/sets forth "Let's also decide firmly how we want to respond to Mr. Stiegler's settlement e-mail to the extent we don't have sufficiently concrete answers from Japan yet. Could be with an e-mail thanking him for the overture and letting him know that MCC is considering the issue and will be responding shortly."

There was no deadline to make a finite offer to Genomatica; correct?

A. Yes, there was.

Q. There was no deadline. You're --

1 J. Fischman

2 A. Yes, there was.

3 Q. -- communication is telling you Ms.  
4 Fischman, that you can simply say to opposing  
5 counsel thank you for your offer. We will discuss  
6 it internally; correct?

7 A. There was a deadline and that's why we  
8 responded.

9 Q. Ms. Fischman, this communication says  
10 that there is and it also states there is nothing  
11 in here that suggests that there is some formal  
12 deadline. In fact, your outside counsel is saying  
13 the opposite.

14 It could simply be a thank you to the  
15 overture to settle; correct?

16 MR. BERMAN: Object to form.

17 A. Do you have the response to this  
18 e-mail?

19 Q. Before we get to another document, it  
20 is clear as of January 5, 2017 at 6:29 p.m., you  
21 are not disputing the time on this because --

22 A. No. I am not disputing the time on  
23 this.

24 Q. It is clear as of 6:30 just about  
25 there was no concrete answer on how MCC wanted to

1 J. Fischman

2 do with respect to making a finite offer to  
3 Genomatica?

4 MR. BERMAN: Object to form.

5 A. I had a discussion with Josh Berman  
6 after --

7 Q. You are not answering the question Ms.  
8 Fischman.

9 A. -- after I went home sick. I don't  
10 know if it was that afternoon. I have always  
11 believed it was, but I am telling you that I was  
12 very sick.

13 Q. Ms. Fischman you said that under oath  
14 and I understand, but as of 6:30 on January 5,  
15 2017 it is clear from your outside counsel that  
16 MCC had not given the go ahead to make that offer  
17 to Genomatica?

18 MR. BERMAN: Object to form.

19 A. No, no, no. It's clear that we hadn't  
20 made a decision how to respond according to that  
21 e-mail.

22 Q. Doesn't it simply state that you don't  
23 have approval from the client to make an offer?

24 MR. BERMAN: Object to form.

25 Q. It says it clearly in this document,

1 J. Fischman

2 does it not?

3 A. I think he is asking a question. I  
4 don't know that he is saying we need -- look, the  
5 document speaks for itself. I can't interpret it  
6 what he is saying.

7 MS. COLWIN: Please mark as Fischman  
8 Exhibit 12 a document Bates stamped 2315  
9 through 2316.

10 (Fischman Exhibit 12, a document  
11 Bates stamped 2315 through 2316, marked for  
12 identification, as of this date.)

13 Q. That is the e-mail communication from  
14 Mr. Berman to opposing counsel.

15 A. Mm-hmm.

16 Q. And in this communication which is  
17 dated January 6, 2017 at 10:50 p.m. it says "MCC  
18 is prepared to settle in exchange for a payment of  
19 \$2.3 million to be paid within 30 days."

20 Correct?

21 A. Yes.

22 Q. Where -- there is no communication  
23 that you wrote to anyone at MCC establishing that  
24 you had the authorization to make this offer;  
25 correct?

1 J. Fischman

2 MR. BERMAN: Object to form.

3 Q. Yes or no?

4 A. It is not a yes or no answer.

5 Q. Then we are going to move on.

6 A. Okay.

7 Q. You have the document in front of you  
8 it is Bates stamped 884.

9 MR. BERMAN: Exhibit 10.

10 Q. That's the communication to Mr. Minami  
11 to Mr. Oliva that an offer had been made without  
12 MCC's approval; correct?

13 A. Actually, it says that an offer had  
14 been made on -- let's see what it actually says.

15 Q. This is an e-mail dated January 19,  
16 2017?

17 A. Yes. It is an e-mail dated January  
18 19th, yes.

19 Q. Now from the time that you made, that  
20 offer was made to Genomatica on January 6th to the  
21 time of January 19th, there is no communication to  
22 MCC that offer had been made; correct?

23 MR. BERMAN: Object to form.

24 A. No, incorrect. A hundred percent  
25 incorrect. We met with Takimoto San in our New

1 J. Fischman

2 York office on January 10th at 1 p.m.

3 Q. Who was at this meeting?

4 A. Nick Oliva and Takimoto and myself in  
5 the small conference room at MCHA.

6 Q. Take a look at 844 and 845.

7 MS. COLWIN: Please mark that as  
8 Fischman Exhibit 13.

9 (Fischman Exhibit 13, a document  
10 Bates stamped 844 and 845, marked for  
11 identification, as of this date.)

12 Q. On 845 Mr. Oliva writes to you on  
13 January 19th after receiving Mr. Minami's e-mail  
14 communication he writes to you "There may be some  
15 confusion about whether a counter settlement offer  
16 was made prior to confirmation from MCC. Can you  
17 please tell me if Josh delivered information to  
18 Genomatica about the 2.3 prior to confirmation  
19 from MCC."

20 Do you see that?

21 A. I do.

22 Q. And Mr. Oliva actually felt that it  
23 was your outside counsel who made the mistake in  
24 making an offer of settlement without prior  
25 authorization; correct?

1 J. Fischman

2 MR. BERMAN: Object to form.

3 A. I can't say what was in his head.

4 Q. I am not asking you to contemplate  
5 what was in his head. It is in the document.

6 A. You just read it. So it's in the  
7 document.

8 Q. He doesn't say that you made the  
9 offer.

10 He thought it was your outside counsel  
11 that made the mistake of making the offer;  
12 correct?

13 MR. BERMAN: Object to form.

14 A. He writes "Can you please tell me if  
15 Josh delivered information to Genomatica about the  
16 2.3 prior to confirmation from MCC."

17 Q. Ms. Fischman, he doesn't accuse you of  
18 wrongful conduct in this e-mail, does he?

19 A. No. There was no wrongful conduct to  
20 accuse me of.

21 Q. He believed it was your outside  
22 counsel that had made that offer to Genomatica;  
23 correct?

24 A. Again, this document has already been  
25 stated.

1 J. Fischman

2 Q. So let's look at 844.

3 This is your response to them?

4 A. Yes.

5 Q. Yes, it was done that way by my  
6 authority?

7 A. Yes.

8 Q. You didn't say by MCC's authority;  
9 correct?

10 A. You can keep reading.

11 Q. Does it say by MCC's authority or does  
12 it say my authority?

13 A. I took full responsibility for making  
14 the offer because Nick and I had discussed it and  
15 he had approved it and he had delegated authority  
16 from MCC.

17 Q. Did it say --

18 A. Yes, I --

19 Q. Does it say in this document based on  
20 our conversations Mr. Oliva I made this offer?

21 A. Yes. It does exactly say that.

22 Q. It says --

23 A. You and I had discussed that offer.

24 Q. Because I was home sick and the date  
25 for response came. There was no due date for

1 J. Fischman

2 response to opposing counsel; correct? There was  
3 no deadline?

4 A. The deadline was January 7th to  
5 respond. That was what was in the original offer.

6 Q. We have already gone through and we  
7 are not going back.

8 Mr. Berman said, and by the way, the  
9 deadline that you are saying is in an arbitrary  
10 deadline imposed by your opposing counsel in  
11 Genomatica; correct?

12 MR. BERMAN: Object to form.

13 A. The request was to respond.

14 Q. I'm not -- it's an arbitrary deadline  
15 that was set forth by opposing counsel in  
16 Genomatica to respond to an offer by January 7th;  
17 correct?

18 MR. BERMAN: Object to form.

19 A. Correct, but I object to the use of  
20 the word arbitrary. Nothing is arbitrary.

21 Q. Was it a court deadline?

22 A. It was not a court deadline.

23 Q. Did the judge impose this deadline?

24 A. It was not a court deadline.

25 Q. What did you mean by this, I believed

1 J. Fischman

2 it was consistent with MCC's fundamental position?

3 A. I was referring to the delegated  
4 authority that Nick had to go down to 2 million  
5 dollars and which he had made that offer at the  
6 ENE.

7 Q. It doesn't say that it was based on  
8 the authorization you received from MCC, does it?

9 MR. BERMAN: Object to form.

10 A. Just because I didn't write that in  
11 this text does not mean that he and I did not both  
12 know that he had authority down to 2 million  
13 dollars. He himself had made an offer of 2  
14 million dollars and that this was well within  
15 that.

16 Q. Ms. Fischman, I am not asking. I am  
17 asking this particular statement says.

18 It doesn't say that based on MCC's  
19 authorization to proceed with 2.3, does it?

20 MR. BERMAN: Object to form.

21 A. The words speak for themselves  
22 Mercedes.

23 Q. Between January 6th and January 19th  
24 you never put anything in writing to Mr. Oliva  
25 that the offer to Genomatica had been made of 2.3;

1 J. Fischman

2 correct?

3 MR. BERMAN: Object to form.

4 A. I didn't need to put anything in  
5 writing. His office was next door to mine. We  
6 talked about it and then we also met with Takimoto  
7 San on January 10th where we had a full and robust  
8 discussion about the offer of settlement and the  
9 strategy going forward and also that they wouldn't  
10 respond to the offer of settlement which they did  
11 not. So there was really no harm whatsoever by  
12 this.

13 Q. Ms. Fischman, where is any of this in  
14 writing? Where is there a writing to your client  
15 saying we are about to make this offer of 2.3  
16 million. Am I authorized to do so? Where is that  
17 in writing?

18 A. Mercedes --

19 Q. Where is it in writing I am asking?  
20 Does it exist? Do you have it at home? Where is  
21 it?

22 MR. BERMAN: Object to form.

23 Q. I am asking.

24 A. And I would like to make a full  
25 explanation.

1 J. Fischman

2 Q. And you can do so if your counsel --  
3 they can call you as a witness.

4 MR. VALLI: Let's take a break.

5 THE VIDEOGRAPHER: We are now going  
6 off the record --

7 MS. COLWIN: Let's finish the line of  
8 questioning.

9 MR. VALLI: I believe we've finished.

10 MS. COLWIN: No.

11 MR. VALLI: I heard you talking to --

12 MS. COLWIN: No.

13 Please mark this as Fischman Exhibit  
14 14 a document Bates stamped 842 to 843.

15 (Fischman Exhibit 14, a document  
16 Bates stamped 842 to 843, marked for  
17 identification, as of this date.)

18 Q. This is an e-mail communication from  
19 you Ms. Fischman to Mr. Minami?

20 A. Mm-hmm.

21 Q. Mr. Oliva is not copied on this  
22 e-mail, is he?

23 A. You know we went back and forth --

24 Q. He is not copied on this e-mail;  
25 correct?

1 J. Fischman

2 A. He is mistakenly not copied on this  
3 e-mail which was sent to him within one minute of  
4 hitting send to the rest of the team.

5 Q. Mr. Berman was not copied on this  
6 either; correct?

7 A. No. Mr. Berman was not copied. He  
8 was not always copied on internal e-mails.

9 Q. And by the way, the communication  
10 there had never been -- withdrawn.

11 In Genomatica the process that you had  
12 with respect to communications with MCC involving  
13 Mr. Berman always included you if there were  
14 communications with MCC and Mr. Berman had to  
15 participate you were always included; correct?

16 MR. BERMAN: Object to form.

17 A. I am not even sure what you are  
18 asking.

19 Q. In communications with MCC involving  
20 Mr. Berman none of those communications ever  
21 occurred without your presence; correct?

22 A. Between MCC and Mr. Berman?

23 Q. Yes. Your outside counsel.

24 A. No. He would not communicate directly  
25 with MCC or MCHJ without copying made to my

1 J. Fischman

2 knowledge.

3 Q. Now you go on to say "After further  
4 consideration between Josh, Nick and I we thought  
5 it would not show good faith negotiation because  
6 it is essentially what we are seeking in the  
7 litigation."

8 That was 2.5 over six months that Mr.  
9 Minami had asked you to offer to Genomatica in  
10 terms to settle the case; correct?

11 A. Yes.

12 Q. And it was -- so you go on to say that  
13 it was instead 2.3 in 30 days?

14 A. Mm-hmm.

15 Q. Nowhere in here in your communication  
16 with Mr. Minami do you say we made the 2.3 because  
17 you authorized the 2.3; correct?

18 A. Well, actually I do say it, but I  
19 don't say it exactly the way you want it to be  
20 said.

21 Q. It is not the way I want it to be said  
22 Ms. Fischman. It is stated here this way by your  
23 communication drafted four years ago.

24 A. First of all, I do state throughout  
25 this that it was a joint decision between Nick,

1 J. Fischman

2 myself and Josh and then I did you state in here  
3 that it was within the position of the authorized  
4 amount of 2 million dollars.

5 Q. Wait, but you are moving ahead because  
6 in between this you write, hang on, I forgot to  
7 send MCC this proposal in advance of our  
8 responding to Genomatica. So you admit in this  
9 communication that you had not received formal  
10 authorization or any authorization from MCC. Let  
11 me strike that.

12 In this communication you state very  
13 clearly that you had not sent this 2.3 million  
14 dollar proposal to MCC prior to making that  
15 communication to Genomatica; correct?

16 A. Actually, what I said is unfortunately  
17 I was home sick the entire week before the  
18 response was due and in my illness --

19 MO MS. COLWIN: Move to strike.

20 Q. You are not answering my question. It  
21 says clearly in this paragraph that you did not  
22 send this proposal of 2.3 million dollars to MCC  
23 prior to making that communication to Genomatica;  
24 yes or no?

25 A. You can lower your tone a little bit

1 J. Fischman

2 first of all.

3 Q. Maybe if you answered the question  
4 rather than not answer the question and being  
5 evasive I wouldn't have to raise my voice.

6 A. I am not trying to be evasive.

7 Q. I have asked you very clear questions.  
8 Yes or no. It says it.

9 There is no authorization to MCC to  
10 make the offer of 2.3 million prior to that offer  
11 being made to Genomatica; correct?

12 MR. BERMAN: Object to form.

13 A. MCC had delegated its authority to  
14 Nick to settle this litigation up to, down to 2  
15 million dollars. I was well aware of that and I  
16 did not send the proposal in advance of responding  
17 to Genomatica.

18 Q. Why didn't you write that that it was  
19 Nick's -- why didn't you say that?

20 A. I said that we discussed it.

21 Q. Where is this statement I believed it  
22 was consistent with MCC's position to obtain 2  
23 million in settlement?

24 Where did you get that conclusion  
25 from?

1 J. Fischman

2 A. I got that conclusion from the fact  
3 that Nick was authorized to settle the case down  
4 to 2 million dollars at the settlement negotiation  
5 in November.

6 Q. How is that communicated to you?

7 A. Nick communicated that to me when he  
8 received the letter from Takimoto San giving him  
9 unbridled authority to settle the case.

10 Q. You go on to write "We knew that both  
11 proposals would be rejected so there would be no  
12 harm to MCC by offering this amount."

13 A. Right. I was well aware that there  
14 was no way they were going to settle at this time  
15 anyway, but we certainly could have pulled it back  
16 at any time if people were upset about the  
17 proposal since no response had ever been made.

18 Q. But Ms. Fischman, what if your  
19 assumption was wrong and you made that offer  
20 without the authorization?

21 MR. BERMAN: Object to form.

22 Q. You would have assumed it was going to  
23 be rejected, but there was a possibility that it  
24 wasn't; correct?

25 A. Well.

1 J. Fischman

2 Q. Yes or no?

3 A. Nick had already offered 2 million  
4 dollars in settlement and this was three hundred  
5 thousand dollars more.

6 Q. Ms. Fischman.

7 A. It was well within the settlement  
8 authorization.

9 MO MS. COLWIN: Move to strike.  
10 Lynne, please ask the question again.  
11 (Record read.)

12 MS. COLWIN: I moved to strike that  
13 part. Let's move on.

14 BY MS. COLWIN:

15 Q. Prior to writing this communication to  
16 Mr. Minami, you never went to Mr. Oliva and said  
17 we have an issue let's strategize on how to handle  
18 the situation; correct?

19 A. No. I was I believe either traveling  
20 or I was home that day. We were not -- neither of  
21 us were in the same physical space.

22 Q. So even though you weren't in the same  
23 physical space, somehow you believed that would  
24 stop you from making a phone call?

25 MR. BERMAN: Object to form.

1 J. Fischman

2 A. How do you know that I didn't make a  
3 phone call?

4 Q. I am not under oath Ms. Fischman.

5 A. No, I am just saying you are saying  
6 that I didn't make a phone call. Perhaps I did.

7 Q. You did not consult with Mr. Oliva  
8 before writing this; correct?

9 A. No, I did not consult with him before  
10 apologizing to Tomoji.

11 MS. COLWIN: Please mark as Fischman  
12 Exhibit 15 a document Bates stamped 838  
13 through 841.

14 (Fischman Exhibit 15, a document  
15 Bates stamped 838 through 841, marked for  
16 identification, as of this date.)

17 Q. Do you see 839 it starts? You write  
18 to Mr. Minami in response to his January 19, 2017  
19 e-mail "I would appreciate it also if you simply  
20 ask me directly if you have a problem or if  
21 someone else has a problem instead of going above  
22 me to Nick without copying me. It is what we call  
23 in the US back-stabbing."

24 A. Yes.

25 Q. You wrote that, did you not?

1 J. Fischman

2 A. I did.

3 Q. Do you believe that it was  
4 discriminatory for Mr. Minami to look into how the  
5 origin of this offer to Genomatica of 2.3 million?

6 A. No. I don't believe so.

7 Q. Do you think it was discriminatory of  
8 Mr. Oliva to look into the origins of the 2.3  
9 million dollar offer to Genomatica?

10 A. Mr. Oliva knew the origins of the 2.3  
11 million dollar offer to Genomatica because he was  
12 in the conversation who decided the 2.3 million  
13 dollar offer to Genomatica. So anything that he  
14 did with regard to that would have been a  
15 pretextual reason for terminating.

16 Q. So Ms. Fischman, when he wrote to you  
17 how did this happen and you saw this communication  
18 in front of you, did Josh make that offer with  
19 this line?

20 MR. BERMAN: Object to form.

21 Q. You have the document right in front  
22 of you. When Mr. Oliva gave you the benefit of  
23 the doubt when he discovered from his  
24 communication with Mr. Minami that a 2.3 million  
25 dollar offer had been made to settle the case at

1 J. Fischman

2 Genomatica?

3 A. I think that Mr. Oliva forgot the  
4 whole transaction of what happened those two weeks  
5 prior because he was in the conversation with me  
6 on January 5th. He was in the conversation with  
7 me and Takimoto San on January 10th and then nine  
8 days later when he received an e-mail that he  
9 couldn't recall what had happened specifically and  
10 maybe that I didn't notify Tomoji, he was  
11 confused. He did expect me to have notified  
12 Tomoji and I've already admitted on the record and  
13 in the e-mails that I failed to notify Tomoji.  
14 The low level window person at MCHJ but Takimoto  
15 San, the business leader and person most important  
16 to this litigation understood what we had done,  
17 what I had done in authorizing Josh to make that  
18 offer. He also understood that it was within  
19 Nick's authority. He didn't question that. He  
20 agreed one hundred percent with our strategy and  
21 was ready to move forward. The confusion was that  
22 two separate businesses in Japan. Tomoji, who  
23 works in the legal department of MCHJ, didn't know  
24 what Mr. Takimoto San knew and so that's what  
25 created the confusion and the miscommunication but

1 J. Fischman

2 no one was against the 2.3 offer. In fact, Tomoji  
3 states in his e-mails we don't think the offer is  
4 so bad. It is the miscommunication that is a  
5 problem.

6 Q. Where in any of this, we have gone  
7 through the documents pertaining to this offer,  
8 you have them all. Where do you --

9 A. I don't know that I have them all.

10 Q. Where does it state Mr. Takimoto  
11 authorizes the 2.3 million dollar offer to  
12 Genomatica? Where does that say -- where does it  
13 say in the document we just reviewed that --

14 A. Well, Mr. Takimoto --

15 Q. No, I am asking you a question. We  
16 just reviewed a document where you are offering an  
17 explanation to your contact at MCHJ, Mr. Minami,  
18 this is 843. Where do you say Mr. Takimoto knew  
19 of this 2.3 million dollar offer? I am not sure  
20 why you are so upset. Where does it say that? It  
21 doesn't say that, does it Ms. Fischman? It  
22 doesn't and when you confronted Mr. Minami with  
23 this communication to Mr. Oliva, you call him a  
24 back-stabber?

25 A. I felt betrayed that he didn't just

1 J. Fischman

2 ask me what happened and then within one minute  
3 after that I apologized immediately. It was very  
4 late at night. Never send an e-mail late at  
5 night. "Sorry about my prior e-mail. Of course  
6 you must feel free to speak exclusively with Nick  
7 anytime. I should not have suggested otherwise.  
8 I am always happy to help you and the others and I  
9 am working diligently to bring success to MCC. I  
10 will do my best to provide you all the necessary  
11 information in the future about this case in a  
12 timely fashion."

13 MS. COLWIN: Let me take a quick  
14 break.

15 THE VIDEOGRAPHER: We are now going  
16 off the record. The time is 11:29.

17 (Recess taken.)

18 THE VIDEOGRAPHER: We are now back on  
19 the record at 11:44.

20 BY MS. COLWIN:

21 Q. Ms. Fischman, in August of 2016 you  
22 were involved in the sexual harassment  
23 investigation of Mr. Tom Larson; correct?

24 A. Yes. This was a complaint by Anne  
25 Riley, another lawyer in our department.

1 J. Fischman

2 Q. So who assigned you to this matter?

3 That was Mr. Oliva, was it not?

4 A. Yes.

5 Q. And isn't it true that you wanted MCHJ  
6 to retain private counsel to do the investigation?

7 A. Yes. I suggested we hire outside  
8 counsel to conduct an investigation of the sexual  
9 harassment claim.

10 Q. Now you had said that it was an  
11 investigation pertaining to a harassment claim by  
12 Ms. Riley; correct?

13 A. Yes.

14 Q. Isn't it true Ms. Riley never made the  
15 complaint, she was never the one who made the  
16 complaint; correct?

17 MR. BERMAN: Object to form.

18 A. I believe that Ms. Riley did make a  
19 complaint.

20 Q. You were chosen to do this  
21 investigation by Mr. Oliva over Mr. Sezar;  
22 correct?

23 A. I was asked to do the investigation.  
24 I was not told why or whether or not other people  
25 were considered.

1 J. Fischman

2 Q. In the past you have conducted various  
3 investigations, have you not?

4 A. Yes.

5 Q. You identified yourself as a lead  
6 employment lawyer within MCHA; correct?

7 A. I was responsible for most employment  
8 issues, yes.

9 Q. Now MCHC wasn't involved in this  
10 investigation; correct?

11 A. No. This was in the Pharma companies.

12 Q. They weren't made aware of it either;  
13 correct, as far as you know?

14 A. It is a different business.

15 Q. So as far as you know they were not  
16 made aware of it; correct?

17 A. No.

18 MCC or MCHC?

19 Q. No, I am talking about MCHC?

20 A. You said MCC.

21 Q. No, I said MCHC.

22 As far as you know MCHC was not made  
23 aware of this issue pertaining to Mr. Larsen;  
24 isn't that right?

25 A. I have no idea.

1 J. Fischman

2 Q. Debra Mora was the HR individual at  
3 Pharma; correct?

4 A. Correct.

5 Q. Isn't it a fact --

6 A. Or I believe so, yes.

7 Q. Isn't it a fact that several people  
8 went to Ms. Mora regarding Mr. Larsen but Anne  
9 Riley did not?

10 MR. BERMAN: Object to form.

11 A. I would have to look back at notes  
12 from that time period. My understanding was that  
13 Anne Riley brought this complaint and that there  
14 were other women in the Pharma company that also  
15 complained at the same time.

16 Q. There are men and women that  
17 complained about Mr. Larsen's behavior; correct?

18 A. To my knowledge, there were three  
19 women.

20 Q. But there were also men that  
21 complained about Mr. Larsen's behavior; correct?

22 A. I don't recall.

23 Q. Weren't the witnesses that you  
24 interviewed pertaining to Mr. Larsen included men  
25 and women?

1 J. Fischman

2 A. I don't recall.

3 Q. After at the conclusion of the  
4 investigation Mr. Oliva did follow up with you to  
5 see what your findings were; correct?

6 A. That requires a further explanation.  
7 I can't answer that with a yes or a no answer.

8 Q. Didn't --

9 A. Would you like me to give the full  
10 explanation?

11 Q. Let me follow up with a subsequent  
12 question.

13 Didn't Mr. Oliva speak to you about  
14 the outcome of the investigation after he had  
15 spoken to Mr. Larsen?

16 A. Probably.

17 Q. What is the basis of your belief that  
18 you were retaliated against because of your  
19 involvement in this investigation?

20 A. I believe I was retaliated against  
21 because I strongly suggested that we should hire  
22 outside counsel because the investigation included  
23 a woman in the legal department and that there was  
24 a high likelihood of a subjective response when  
25 you are investigating one of your own and that I

1 J. Fischman

2 thought that we should have an objective  
3 investigation by an outside third-party and it  
4 would also raise the seriousness of the claims to  
5 an appropriate level.

6 Q. So just to make sure that the time  
7 frame is clear on the record.

8 This is August of 2016; correct?

9 A. I thought it was October of 2016, so.

10 Q. In January of 2017 you had gone to  
11 California with Mr. Oliva, did you not? It was a  
12 business trip; correct?

13 A. In January shortly after the Tomoji  
14 situation on January 19th. So on January 21st I  
15 believe --

16 Q. Withdrawn.

17 A. May I finish the answer?

18 Q. Just yes or no.

19 In January of 2017, it is foundation.  
20 Otherwise, your counsel is going to object to  
21 form. It is strictly foundation.

22 You were on a business trip to  
23 California with Mr. Oliva January 2017; correct?

24 A. Correct.

25 Q. The primary purpose of that trip was

1 J. Fischman

2 to advise Aldila of a major reduction in force;  
3 isn't that right?

4 A. No. That is not correct.

5 Q. It is your testimony that you were not  
6 there to have a conversation with the president of  
7 Aldila regarding the reduction in force?

8 A. Are you going to allow me to make a  
9 full explanation? The primary purpose of that  
10 business trip over four days in -- we visited four  
11 different companies the primary purpose of which  
12 was to provide ethics training to four companies  
13 leadership and I provided that expert ethics  
14 training to those four leadership teams.

15 In addition to that primary purpose, I  
16 also did have a meeting at the Aldila company  
17 about their plans for potential reduction in  
18 force.

19 Q. Wasn't the initial -- withdrawn.

20 Wasn't the primary purpose of the trip  
21 as explained to you by Mr. Oliva that there had to  
22 be a conversation with Aldila regarding the  
23 significant reduction in force and while you were  
24 there there was an intention to also visit with  
25 other companies, specifically the carbon fiber

1 J. Fischman

2 businesses in that location as well; correct?

3 A. I just explained the primary purpose  
4 of the trip was to provide ethical training,  
5 training on ethics and compliance to the four  
6 major businesses in California as where we drove  
7 from San Diego and --

8 Q. So the answer is no?

9 MO MS. COLWIN: Move to strike.

10 Q. The answer is no, that part --

11 A. So you are cutting me off.

12 Can I finish the --

13 Q. Ms. Fischman, I only have a very short  
14 period of time. So let's move on.

15 A. Okay.

16 Q. The answer is no, that was not your  
17 purpose?

18 A. That was not the primary purpose, no.

19 Q. The training that you describe, that's  
20 not a training for lawyers of professional  
21 responsibility; correct?

22 A. No. It was for business people on the  
23 ethical business practices.

24 Q. And it was not a training on  
25 litigation management either; isn't that right?

1 J. Fischman

2 A. That's correct.

3 Q. And it was a stock code of conduct  
4 training that you had delivered fairly frequently  
5 as a counsel at MCHJ; isn't that right?

6 A. Over the eight years I worked at MCHJ  
7 I was the primary person who delivered the ethics  
8 trainings to over probably 30 businesses.

9 Q. And the training was a stock code of  
10 conduct policy training, basic training for all  
11 levels of employees, from factory line employees  
12 to sales to managers of manufacturing plants;  
13 isn't that right?

14 A. No. This particular training was to  
15 more high level managers, supervisors and  
16 executive management.

17 Q. There had been a similar training that  
18 you had done just before this January 2017 trip in  
19 Canada, did you not?

20 A. You would have to refresh my memory on  
21 the date.

22 Q. That is the training at Technophar in  
23 Canada shortly before this January 2017 training?

24 A. Again, you would have to -- I am not  
25 sure when I was at Technophar. You would have to

1 J. Fischman

2 refresh my memory with some documentation.

3 Q. And that is a prepared deck that you  
4 gave when you gave that training; isn't that  
5 right?

6 A. That's right. I prepared the deck and  
7 when you talking about a deck you mean a  
8 PowerPoint presentation that I had developed over  
9 the eight years that I've worked at Mitsubishi.

10 Q. On January 30, 2017 you were called in  
11 a meeting with Mr. Oliva and Ms. Saunders, were  
12 you not?

13 A. Yes.

14 MS. COLWIN: Please mark as Fischman  
15 Exhibit 16 a document Bates stamped 806 to  
16 807.

17 (Fischman Exhibit 16, a document  
18 Bates stamped 806 to 807, marked for  
19 identification, as of this date.)

20 Q. Ms. Fischman, you are familiar with  
21 this document, are you not?

22 A. Yes.

23 Q. On January 30, 2017 you were informed  
24 by Mr. Oliva in the presence of Ms. Saunders that  
25 you were to be separated from MCHA; correct?

1 J. Fischman

2 A. I am sorry. I wasn't listening. I  
3 was reading.

4 What did you say?

5 Q. I said on this day Mr. Oliva informed  
6 you that your services were no longer needed at  
7 MCHA in the presence of Ms. Saunders; correct?

8 A. Yes.

9 Q. I want you to take a look at the  
10 written portions, not the typewritten portion.

11 With respect to the typewritten  
12 portion, this was told to you on that day by Mr.  
13 Oliva; correct?

14 A. That's right.

15 Q. Looking at --

16 A. I am sorry. The typewritten portion  
17 he told to me, yes.

18 Q. So I am asking you to just focus on  
19 the written portion. It says witnessed by P.  
20 Saunders. That's her signature.

21 You are familiar with her signature;  
22 correct?

23 A. Yes.

24 Q. And it says delivered 1/30/17 10:01  
25 a.m.

1 J. Fischman

2 That's Mr. Oliva's signature; correct?

3 A. It appears to be so.

4 Q. It says "You authorizing" which means  
5 you authorizing the settlement to Genomatica. Mr.  
6 Oliva said to you "I told you to go to the client  
7 as is your obligation." And your response was "I  
8 forgot."

9 MR. BERMAN: Object to form.

10 Q. You expressed that during that  
11 meeting, did you not?

12 A. I think this is a very condensed note  
13 on what was a fuller conversation and obviously  
14 self serving for Mr. Oliva.

15 MO MS. COLWIN: Ms. Fischman, I am going  
16 to move to strike that part of your  
17 testimony.

18 Q. In the conversation with Mr. Oliva  
19 when he said to you with respect to the 2.3  
20 million dollar offer made to Genomatica, he had  
21 said as is your obligation, you did not get the  
22 authorization to make that offer to Genomatica and  
23 when asked about it you replied, do you see  
24 quotations here I forgot.

25 You express that, did you not?

1 J. Fischman

2 A. No, I did not. I wouldn't have just  
3 said ooh, I forgot. I would never have said it  
4 just like that. We would have had a longer  
5 conversation.

6 Q. Is anything in sum and substance did  
7 you say to Mr. Oliva during that conversation in  
8 that particular moment when this was discussed  
9 regarding the 2.3 million dollar offer to  
10 Genomatica, did you say in sum and substance I  
11 forgot?

12 A. No.

13 Q. Go below.

14 You asked about a package; correct?  
15 Meaning a severance package; isn't that right?

16 A. I asked if they were going to provide  
17 a severance package for my eight years of service  
18 or nine years of service.

19 Q. Didn't you say to Mr. Oliva no  
20 package?

21 A. No, I did not.

22 Q. Go to the second page. I want you to  
23 go through each one.

24 Didn't you say to Mr. Oliva in the  
25 presence of Ms. Saunders "There is no harm caused

1 J. Fischman

2 by the ethics violation because they ultimately  
3 went along with it"?

4 A. No. Why would I say it like that?  
5 First of all --

6 Q. Your answer is no.

7 In sum or substance did you not say to  
8 Mr. Oliva there was no harm caused by the ethics  
9 violation because they ultimately went along with  
10 it?

11 A. No, because we had never discussed any  
12 kind of ethical violation until this document. So  
13 I would not have turned around and said anything  
14 like this. I may have said there was no harm  
15 caused.

16 Q. So let me rephrase.

17 In sum and substance did you not say  
18 to Mr. Oliva that there was no harm caused by the  
19 2.3 million dollar offer that was unauthorized by  
20 MCC because ultimately they went along with that  
21 offer?

22 MR. BERMAN: Object to form.

23 A. I could not have said all of that. So  
24 I will say no, because your question goes on so  
25 long and it assumes that they went along with the

1 J. Fischman

2 2.3 million dollar offer. They hadn't settled by  
3 January 30th. Ultimately they settled later after  
4 I was gone. So I couldn't have said that.

5 Q. Second, didn't you say to Mr. Oliva in  
6 sum or substance why did you let me drive around  
7 California if you knew?

8 A. Yes. I definitely said why would you  
9 make me drive you all over California if you knew  
10 you were going to fire me the day we returned.

11 Q. Next, in sum or substance did you not  
12 say to Mr. Oliva if you wanted me gone you could  
13 have talked to me and offered me something?

14 A. Yes.

15 Q. Next, in sum or substance did you not  
16 say to Mr. Oliva if you told me I could have  
17 brought my laptop in?

18 A. Yes.

19 Q. In sum or substance did you not say  
20 you handled this to Mr. Oliva, you handled this  
21 poorly because I have a lot of work that you don't  
22 even know about and meetings today?

23 A. I would have said something to the  
24 effect of I have a lot of information on the 22  
25 companies that I supported of which he could not

1 J. Fischman

2 have been aware of every single detail of even who  
3 I was having telephone calls with that morning.  
4 So yeah, I was pretty upset I would not be able to  
5 give them a download of data and different matters  
6 and different contracts that I was working on.

7 So yes, I did say that or something  
8 like that.

9 Q. In sum or substance didn't you say to  
10 Mr. Oliva I expected more from you?

11 A. I don't recall saying that.

12 MS. COLWIN: I reserve some time of  
13 the time that I asked Mr. Valli with respect  
14 to the documents that were served last week.  
15 I will review them and to the event that we  
16 need to review it and ask any questions we  
17 will speak again, but other than that Ms.  
18 Fischman thank you for your time.

19 A. Okay, thank you.

20 MS. COLWIN: We are going to go off  
21 the record.

22 THE VIDEOGRAPHER: We are going off  
23 the record and the time is 12:02.

24 (Recess taken.)

25 THE VIDEOGRAPHER: We are going on the

1 J. Fischman

2 record at 12:06.

3 EXAMINATION BY

4 MR. FORTINSKY:

5 Q. Good afternoon Ms. Fischman. My name  
6 is Jerry Fortinsky. I represent MCHC and I am a  
7 partner in the firm of Shearman and Sterling.

8 A. Hi Jerry. Nice to meet you.

9 Q. Nice to meet you too.

10 Did you read the transcript of the  
11 first day of your testimony?

12 A. I did not.

13 Q. Did you speak to your counsel since  
14 the first day of your testimony?

15 A. Yes.

16 Q. How many times?

17 A. Two times.

18 Q. When?

19 A. Friday and we had dinner last night.

20 Q. Did you discuss your testimony at  
21 either meeting?

22 A. Well, I think that my discussions with  
23 counsel are attorney/client privilege. So let's  
24 just leave it there.

25 Q. I am not asking you about the

1 J. Fischman

2 substance of your testimony. I am just asking  
3 whether you discussed the deposition at those two  
4 occasions?

5 A. Yes.

6 Q. How long did you meet with your  
7 attorneys, how long did you speak to your  
8 attorneys on Friday?

9 A. A couple of hours.

10 Q. And who did you meet with?

11 A. Mr. Berman and Rob Valli.

12 Q. And you said you had dinner with them  
13 last night?

14 A. I had dinner with Sara and Rob.

15 Q. Have you discussed your deposition  
16 either first day or today with anyone other than  
17 your attorneys?

18 A. Just generally with my family.

19 Q. Who interviewed you for your first  
20 position with MCHA or any predecessor?

21 A. Donna Costa and other members of the  
22 legal department at MCHA in 2007 and '8. End of  
23 '7 beginning of '8.

24 Q. And Donna Costa was at MCHJ were  
25 predecessors; correct?

1 J. Fischman

2 A. It was MCUSA at the time and it was  
3 Donna and yes, as general counsel at the time of  
4 MCUSA.

5 Q. You didn't interview with anyone from  
6 MCHC; correct?

7 A. No, not at that time.

8 Q. Where did the interviews -- when you  
9 say not at that time, was there some other time  
10 when you interviewed with MCHC?

11 A. No. Let's just stick to 2008 for now  
12 and then we will move on if you don't mind, so I  
13 can be more very specific with my answers.

14 Q. I appreciate your clarification with  
15 the answer, but I still want to ask whether there  
16 was some other time when you had an interview not  
17 a meeting or discussion but an interview with  
18 MCHC?

19 A. No. I did not have an interview with  
20 MCHC.

21 Q. Where did the interviews in 2007 and  
22 2008 take place?

23 A. In New York. One was in New York City  
24 at a restaurant with Donna and the others were at  
25 the MCUSA offices which were located in White

J. Fischman

Plains.

Q. You reported to Ms. Costa for most of your time at MCHA; correct or its predecessors; correct?

A. Yes, correct.

Q. Do you ever report directly to anyone else?

A. Directly, no.

Q. Did you ever report to Nick Oliva?

A. Yes, I am sorry. Yes, from November 30, 2015 to January 30, 2017 I reported to Nick Oliva.

Q. What was his position at the time?

A. General counsel.

Q. Of?

A. MCHA.

Q. When you were hired you received your offer of employment from Ms. Costa; correct?

A. Yes.

Q. Who made the decision to hire you in 2008?

A. I couldn't say other than receiving the letter.

Q. Do you have any evidence that MCHC

1 J. Fischman

2 played a role in the decision?

3 A. No. Not at that time.

4 Q. When you worked before you were  
5 terminated, did you have an ID of some kind,  
6 employee ID?

7 A. I think we had, it was post 9/11. So  
8 I think we had card readers to get into the office  
9 building. I can't recall if we had those at MCUSA  
10 in White Plains but we had them once we moved in  
11 2011 to New York City.

12 Q. Did the card reader identify on its  
13 face the name of the company that employed you?

14 A. I assume it did.

15 Q. And what company is that?

16 A. You would have to look at the card  
17 reader. I am sure it was -- I can't say. You  
18 would have to go back and look at the card reader.  
19 I don't have it in my possession. You guys have  
20 it.

21 Q. I understand.

22 Did you ever discuss your job with any  
23 of your friends?

24 A. I am sure I have.

25 Q. Did you ever tell them where you

1 J. Fischman

2 worked?

3 A. I am sure I would have.

4 Q. Do you recall where you told them you  
5 worked?

6 A. I am sure I called it Mitsubishi,  
7 Mitsubishi Chemical.

8 Q. Did you ever tell them you worked at  
9 MCHA?

10 A. Probably didn't use that acronym. I  
11 typically refer to it as Mitsubishi Chemical or I  
12 usually would say Mitsubishi and then I would  
13 identify it as Chemical because people know the  
14 Mitsubishi companies they think of the car or in  
15 my prior career at Raytheon we were more familiar  
16 with Mitsubishi Heavy Industries.

17 Q. When someone asked you where you  
18 worked, did you ever tell anyone that you had more  
19 than one employer?

20 A. I typically would explain the  
21 integration of the companies possibly.

22 MO MR. FORTINSKY: Move to strike as not  
23 responsive.

24 Q. Did you ever tell anyone that you  
25 worked for more than one employer?

1 J. Fischman

2 A. I don't think that I would have ever  
3 gotten into that. I mean I don't know.

4 Q. Did you ever tell anyone that you had  
5 joint employers?

6 A. I don't think I would ever have had  
7 that conversation with someone.

8 Q. You don't think you ever did have that  
9 conversation with anyone?

10 A. Not until we started talking about  
11 joint employment for the basis of this litigation.

12 Q. Until the litigation had you ever  
13 heard of the joint employer doctrine?

14 A. I am sure yeah, I am sure I have.

15 Q. In what context?

16 A. I have been a lawyer for 20 years.

17 Q. Can you think of any case where you  
18 dealt with it prior to your filing this lawsuit?

19 A. So I am generally aware of the  
20 possibility of joint employment between a parent  
21 company and its wholly owned subsidiary. In fact,  
22 we were concerned about that as a legal department  
23 because the way that Mitsubishi Chemical Holdings  
24 Corp. and its three major companies Mitsubishi  
25 Chemical Corp., Mitsubishi Tanabe Pharma,

1 J. Fischman

2 Mitsubishi Plastics, the way they operated is to  
3 be completely in control of everything that goes  
4 on in their subsidiaries. So we would often tell  
5 them to be more careful so that they are not  
6 considered joint employers, but they didn't listen  
7 and they really were completely integrated and  
8 completely in control of the operations of their  
9 subsidiaries.

10 Q. What was it that you told them to do  
11 or not to do?

12 A. Probably we would tell them to observe  
13 more formalities. We would -- more corporate  
14 formalities. We would probably suggest that they  
15 allow a US person be their management, make the  
16 management decisions. Give them more autonomy.

17 Q. Is there any recommendation that you  
18 recall making that was not followed?

19 A. That wasn't followed in most of the  
20 companies, no.

21 Q. More specifically, what  
22 recommendations were not followed?

23 A. I just said, they had Japanese ex pats  
24 who were in control of usually the money and the  
25 direction of the company. The president, director

1 J. Fischman

2 of finance almost always. The board members were  
3 almost always partially from the parent company,  
4 which means that all the major decisions were  
5 typically made in Japan at the parent company.

6 Q. Did you ever express concern about  
7 what you are testifying as a failure to adopt what  
8 you recommended?

9 A. I am sure that over the course of my  
10 time at the company we had discussions about it,  
11 sure.

12 Q. Do you remember any specific  
13 discussions?

14 A. Not at this time.

15 Q. Did you ever refer to yourself as an  
16 employee of MCHC?

17 A. Again, I wasn't using that  
18 terminology, so.

19 Q. We talked before about what  
20 terminology you would use with your friends.

21 A. Mitsubishi.

22 Q. But now I am asking a broader question  
23 not limited to people externally who might not be  
24 alert to the distinctions within Mitsubishi  
25 Chemical.

1 J. Fischman

2 I am saying anywhere even within the  
3 company, did you identify yourself as an employee  
4 of MCHC at any time?

5 A. I always felt like I was or that the  
6 company was beholden to this parent company. I  
7 don't think I referred to myself that way but the  
8 inverse of that is true as well. I don't think I  
9 ever referred to my -- it is not like I walked  
10 around and said I am MCHJ or I'm MCHA or I'm MCC.  
11 I didn't do either.

12 Q. You got reviewed. We have looked at  
13 some of those reviews already.

14 A. Yes.

15 Q. Who provided those reviews? Who  
16 reviewed you?

17 A. Well, I typically wrote most of the  
18 review and then Donna Costa, who was my direct  
19 report, would give me the final review in her  
20 office and then when Mr. Oliva was my direct  
21 supervisor he gave me one such review.

22 Q. No one from MCHC ever gave you a  
23 review; correct?

24 A. No one from MCHC was ever in the room.  
25 Only my direct report, only my direct supervisor.

1 J. Fischman

2 Q. But no one from MCHC ever wrote a  
3 written review for you either; correct?

4 A. No, but I don't know that they didn't  
5 provide input and in fact, I would assume they did  
6 provide input if I was doing work for them as  
7 well.

8 Q. Do you have any concrete information  
9 to suggest that they did?

10 A. No.

11 Q. Did you ever represent MCHC as a  
12 client -- withdrawn.

13 Did you in your role with MCHA  
14 consider yourself to have clients, internal  
15 clients?

16 A. Yes.

17 Q. Who were they?

18 A. We did this in the first round of my  
19 testimony. Mercedes gave us a list and I  
20 identified about 25 different entities.

21 Q. I recall that.

22 Was MCHC one of the clients that you  
23 represented?

24 A. No. No, they were not.

25 Q. You never represented MCHC?

1 J. Fischman

2 A. No.

3 Q. How about MCC?

4 A. Yes.

5 Q. What interactions did you have with  
6 MCHC in your role within MCHA?

7 A. Our legal department reported directly  
8 to the MCHJ which is the legal department for MCHC  
9 and many of the people that I did do work for were  
10 also executive officers of MCHC.

11 Q. Tell me what you mean by the people  
12 that you did work for?

13 A. Takimoto San I believe was an  
14 executive officer.

15 Yoshisato San, who was our president  
16 and then went back to Japan and became an  
17 executive officer and I believe still had input in  
18 the work that was going on in our office.

19 Ken Fujiwara who was the  
20 administrative officer for MCHJ was also an  
21 executive officer at MCHC and these were the  
22 people that I had direct -- Sakaguchi San was at  
23 MCHJ but again that was the legal arm of MCHC. So  
24 it was kind of like that.

25 Q. And the people, the gentlemen you just

1 J. Fischman

2 mentioned, you had interactions with them  
3 throughout your period in the counsel of office?

4 A. Ken Fujiwara from day one. I didn't  
5 have interaction with him, but I knew of him.  
6 Donna had direct contact with him from the  
7 earliest of my employment.

8 Q. And the others that you mentioned, you  
9 had direct interactions with them throughout your  
10 period in the counsel's office?

11 A. Actually kind of in a mixed way and  
12 very infrequently. More so towards the end of my  
13 tenure. Three interactions. I know that they --  
14 I had interactions. I didn't have a great deal of  
15 interactions, but I had interactions and I knew  
16 they knew what was going on in our you business.

17 Q. And you had direct interactions with  
18 them during your period as acting general counsel;  
19 correct?

20 A. Very, very, very limited.

21 Q. What do you mean by very, very, very  
22 limited?

23 A. I mean that when I was given the  
24 position I was told to have limited contact with  
25 Japan. That they did not really want to deal with

1 J. Fischman

2 me and that I could provide Sakaguchi with a  
3 quarterly report, but other than that I did not  
4 no, I did not have any interaction with Ken  
5 Fujiwara who was the main lead and I had limited  
6 interaction with Takimoto, but only as it related  
7 -- well, he is at MCC and only as it related to  
8 the Genomatica and contracts, litigations.

9 Q. We will come back to that.

10 Did you have an employment contract?

11 A. No.

12 Q. Where were the terms and conditions of  
13 your employment set forth?

14 A. I guess in that offer letter back in  
15 2008 and then each year I got a salary increase.

16 Q. And the terms of your employment set  
17 forth in your offer letter, the offer letter --  
18 sorry. Withdrawn.

19 The offer letter that set forth your  
20 terms and conditions of your employment was signed  
21 by MCHA or its predecessor; correct?

22 A. So the terms and conditions of my  
23 lower level corporate counsel position. Which is  
24 the only letter I ever received, was I believe  
25 signed by Donna Costa or Carolyn, I can't remember

1 J. Fischman

2 Carolyn's last name right now, Warner I think who  
3 was the director of HR in Virginia at the time.

4 Q. In your complaint you say and we can  
5 look at it, but I don't know if it is necessary.  
6 In your complaint you say that the key terms of  
7 your employment were controlled, dictated and  
8 approved by MCHC.

9 Do you recall that from your  
10 complaint?

11 A. It would be helpful if I had it in  
12 front of me so I can see the context and where it  
13 was.

14 MR. FORTINSKY: Sure. I am going to  
15 ask the reporter to mark as Fischman Exhibit  
16 17 the first amended complaint which is that  
17 is docket 89.

18 (Fischman Exhibit 17, the first  
19 amended complaint, marked for  
20 identification, as of this date.)

21 Q. I will direct your attention to  
22 paragraph 108.

23 A. Okay.

24 Q. The first line, that's the one I read.

25 A. Do me one favor and give me one

1 J. Fischman

2 second. I want to see where we are in the  
3 complaint because we are pretty deep into it.

4 Q. Take your time.

5 A. Okay.

6 Q. What is your basis for saying -- do  
7 you still believe that it's true that the key  
8 terms of your employment were controlled, dictated  
9 and approved by MCHC?

10 A. Yes.

11 Q. What's your basis for saying so?

12 A. Because by the time as I grew in the  
13 position I realized that MCHC really controlled  
14 everything at MCHA and that because they  
15 controlled the budget, because MCHA was not a  
16 profit center. We didn't make anything. We  
17 didn't sell anything. That all the money came  
18 from MCHC and then also through its subsidiaries  
19 to pay for legal services, that they controlled  
20 everything. They controlled our entire budget for  
21 the office. Whether or not we could afford to  
22 have Diet Cokes in the kitchen.

23 So yeah, my benefits, my salary,  
24 everything was controlled by MCHC.

25 Q. How do you know they controlled

1 J. Fischman

2 whether there were Diet Cokes in the kitchen?

3 A. Maybe I was exaggerating a tiny bit,  
4 but because they controlled the budget for the  
5 office everything had to have been determined by  
6 that budget and that budget was completely passed  
7 through MCHC by the director of finance every  
8 year.

9 Q. What is the basis for the  
10 extrapolation that because MCHA's budget reflected  
11 input from MCHC that MCHC determined the terms and  
12 conditions of your employment?

13 A. Because Donna had to ask for  
14 permission and authority on all of those matters.

15 Q. How do you know that?

16 A. She discussed it and we discussed it  
17 at length when she gave me the information about  
18 the acting general counsel position.

19 Q. Do you remember what she said to you?

20 A. When she handed me the budget she  
21 explained to me how it worked and she also  
22 explained to me how everything had to be approved  
23 and that if we were going to hire replacement for  
24 me this was the amount we had because they had to  
25 take money from the legal budget to pay for her as

1 J. Fischman

2 the president because the president that had been  
3 formerly in the position was an ex pat and since  
4 he still had his position at MCHC in Japan, they  
5 didn't pay him as much as they were going to be  
6 paying her. So part of the budget had to then  
7 adjust and all of this budget had to be approved  
8 by Japan.

9 Q. Is there anything else that you would  
10 add from those conversations referred to with  
11 Donna Costa?

12 A. I believe also the insurance and all  
13 the benefits would have been approved by Japan.

14 Q. What do you mean by the insurance and  
15 the benefits?

16 A. The cost of our insurance plans was  
17 all run past Japan, everything.

18 Q. Did you discuss that with Donna Costa  
19 at that meeting?

20 A. I most certainly did and I also  
21 discussed that at earlier points because we looked  
22 at -- we were doing an ongoing insurance review.  
23 I wasn't responsible for the review, but it was a  
24 general understanding that she had worked on  
25 pension materials prior to this time period. So I

1 J. Fischman

2 knew that she worked with people in Japan on that  
3 and then I know that, I knew that both Iguchi San  
4 and Shin. Kohei and Shin. Let's just leave it at  
5 those two names. Kohei, K-O-H-E-I and Shin,  
6 S-H-I-N who were both finance directors, ex pats  
7 from Japan. I knew that they worked directly with  
8 MCHC counterparts for all of our financial  
9 matters.

10 Q. So what you have described so far is  
11 about the organization's budget and finances.

12 My question is what is the basis for  
13 extrapolating those discussions about the  
14 organization's budget and finances to infer that  
15 the terms and conditions of your personal  
16 employment were actually dictated by MCHC?

17 A. Because early on I believe as I was a  
18 lower level employee that they may not have been  
19 completely involved in those decisions. They were  
20 not involved in my decision or mine and Donna's  
21 decision to hire Steven Rose.

22 However, at the higher level of the  
23 company I was well aware that approval needed,  
24 approval was needed from MCHC to be appointed  
25 general counsel and also to demote me and we know

1 J. Fischman

2 that from the documents that you've produced.

3 Q. I ask the question again though.

4 What is the basis for inferring that  
5 that was for extrapolating that the alleged  
6 control by MCHC over budget and even position  
7 selection meant that they controlled the terms and  
8 conditions of your individual employment; the  
9 terms of your contract, in other words?

10 A. I didn't have a contract. I asked for  
11 a contract and that was denied.

12 Q. We can debate -- we don't have to get  
13 into legalities whether it was or it was not a  
14 contract notwithstanding the absence of an  
15 agreement.

16 A. Okay.

17 Q. But my question still stands as to  
18 what the basis was for, what support that provides  
19 for the statement that they controlled the terms  
20 of your personal employment?

21 A. It was my belief or rather I knew that  
22 my boss at the time Donna Costa was in constant  
23 communication with Ken Fujiwara at MCHC and about  
24 the way that the legal department was run and I  
25 knew that she spoke with MCHC about my promotion

1 J. Fischman

2 or demotion and was led to believe in our meeting  
3 that that decision was made in Japan.

4 Q. Did MCHC maintain any employment  
5 records for you personally?

6 A. I don't know.

7 Q. Do you have any basis to think so?

8 A. I have no basis to know that they  
9 don't.

10 Q. Do you have any basis to believe that  
11 MCHC determined the amount that you were paid?

12 A. Yes. I believe that they probably did  
13 have input into that.

14 Q. What's the basis for that?

15 A. Because they developed the budget I  
16 believe and they provided the funding for both the  
17 budget and our salaries and our bonuses that I  
18 believe they did have input.

19 Q. We will come back to that.

20 Do you have any basis to believe that  
21 MCHC supervised or controlled the conditions of  
22 your employment?

23 A. Could you be more specific when you  
24 talk about the conditions of my employment that  
25 you are asking about?

1 J. Fischman

2 Q. Your complaint says in part in  
3 paragraph 104 which is in front of you, that  
4 defendants MCHA and MCHC, you can read paragraph  
5 104 to yourself.

6 A. Which number? I am sorry.

7 Q. Paragraph 104. You see number 2  
8 within paragraph 104 refers to supervise and  
9 control plaintiff's conditions of employment?

10 A. Mm-hmm.

11 Q. Do you have any basis to support the  
12 statement that MCHC supervised and controlled the  
13 conditions of employment?

14 A. As I explained, I believe that Ken  
15 Fujiwara as an employee of MCHC definitely had  
16 some control over the conditions of my employment.

17 Q. What about number one, hire and fire  
18 plaintiff, do you have any basis to believe that?

19 A. Yes. I believe Ken Fujiwara  
20 specifically had the ability to hire and fire me.

21 Q. Is there anything else that you can  
22 add that supports the allegations in paragraph  
23 104?

24 A. I generally knew that these  
25 discussions were happening in Japan when Donna met

1 J. Fischman

2 with members of MCHC about me and we have seen  
3 evidence in this lawsuit produced by defendants  
4 that confirm that Mr. Fujiwara was in fact and Mr.  
5 Guchisato (phonetically) was in fact involved in  
6 those decisions and possibly others.

7 Q. Did you ever ask for a raise while  
8 working for MCHA?

9 A. No.

10 Q. Do you ever raise questions about your  
11 employment with Pat Saunders?

12 A. That's too broad a question. I am  
13 certain that I may have.

14 Q. If you had any questions about the  
15 circumstances or conditions of your own  
16 employment, who would you turn to?

17 A. Probably Donna.

18 Q. Anyone else?

19 A. I am sure at times Pat Saunders. She  
20 was HR.

21 Q. For?

22 A. For Mitsubishi.

23 Q. For MCHA?

24 A. Yeah. She was resident in our office.

25 MR. FORTINSKY: Let's mark as Fischman

1 J. Fischman

2 Exhibit 18 a document with the Bates number  
3 465 and 466.

4 (Fischman Exhibit 18, a document  
5 Bates stamped 465 and 466, marked for  
6 identification, as of this date.)

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. What is it?

10 A. This is a request to Pat Saunders  
11 after my demotion in 2015 where I asked what my  
12 salary, what the details of my salary were going  
13 to be because we didn't really get into those  
14 details during the meeting with Donna Costa where  
15 I was demoted.

16 Q. So when you had a question as for  
17 example on 466, about the terms and the pay that  
18 you would have as counsel, you asked MCHA's HR  
19 person; correct?

20 A. Correct. That doesn't mean however  
21 that it wasn't approved by someone in Japan  
22 because I think we have learned through the  
23 documents that Mr. Fujiwara was in fact aware and  
24 approved of this scheme (sic).

25 Q. What is the basis for you saying that?

1 J. Fischman

2 A. That's the e-mails that have been  
3 produced during the course of this litigation.

4 Q. Okay. Well, they speak for  
5 themselves.

6 A. Okay.

7 Q. We talked before about the clients  
8 that you served as inhouse counsel.

9 Did they pay for your time or service?

10 A. No.

11 Q. Was there a legal services agreement?

12 A. Yes.

13 Q. And what were the terms of the legal  
14 services agreement with respect as between one of  
15 your clients -- withdrawn.

16 Who were the parties to the legal  
17 services agreement?

18 A. You know what, mostly it was between  
19 the particular affiliate company and maybe MCHA or  
20 MCUSA.

21 Q. And pursuant to the legal services  
22 agreement MCHA or MCUSA would provide legal  
23 services to these various affiliates; correct?

24 A. Yes.

25 Q. And in that sense the MCHA legal

1 J. Fischman

2 department had these affiliates as its clients as  
3 we discussed before; right?

4 A. Yes.

5 Q. And was there any financial component  
6 to the legal services agreement?

7 A. I can't recall. I am sure there is  
8 because -- I am sure there is.

9 Q. And does the funding provided pursuant  
10 to those legal services agreement support the  
11 budget of the legal department?

12 A. Part of it.

13 Q. Where does the other part come from?

14 A. MCHC.

15 Q. Were you ever required to obtain  
16 MCHC's consent for any decision, you personally?

17 A. I can't recall.

18 Q. You can't recall any instance of that?

19 A. I can't recall because you are asking  
20 me to go back over nine years.

21 When you say any decision, can be more  
22 specific?

23 Q. Let me put the question this way, can  
24 you recall any instance in which you were asked to  
25 obtain the consent of MCHC for any decision that

1 J. Fischman

2 you were involved in in your role as counsel?

3 A. I didn't necessarily have direct  
4 contact with MCHC. I had direct contact with my  
5 two supervisors. They had contact with MCHC.

6 Q. But --

7 A. So I wouldn't have been in a position  
8 to ask.

9 Q. So the answer to my question if I  
10 understand correctly is no, you can't recall any  
11 instance in which you asked, in which you were  
12 asked to obtain MCHC's consent to a decision; is  
13 that correct?

14 A. Most of the time I was too low level  
15 to have had interaction with MCHC. However, as I  
16 grew in my positions I had a lot of interaction  
17 with people at all of the companies including  
18 MCHC. So I would have from time to time have  
19 interacted with people both at MCHC, MCC, MPI.  
20 All the Japanese parent companies including MCHC.

21 Q. Still my question is: Can you recall  
22 a single instance as you sit here today where you  
23 were asked to obtain MCHC's consent to any  
24 decision?

25 A. No.

1 J. Fischman

2 Q. Can you recall any specific instance  
3 in which Donna Costa was required to obtain MCHC's  
4 consent to any decision?

5 A. I think that Donna Costa was  
6 frequently in contact with multiple high level  
7 members up to and including the CEO Mr. Kobeoshi  
8 (phonetic) and she would have been in a position  
9 to ask for consent on any number of matters  
10 including the role of the legal department in its  
11 entirety including the way that the legal  
12 department was set up initially when MCA broke up  
13 and MCUSA was formed. I believe that they had a  
14 great deal of input in that over the years she and  
15 I had discussed those types of instances. She  
16 went to Japan at least two to three times a year.  
17 I know that she had to have approval to go to  
18 business school.

19 So yeah, I would say that she  
20 definitely asked for approval on a great many  
21 matters.

22 MO MR. FORTINSKY: Move to strike as not  
23 responsive.

24 Q. You had extensive discussions over  
25 eight years or so with Donna Costa over all kinds

1 J. Fischman

2 of things?

3 A. Yes.

4 Q. Do you recall any specific instance  
5 where she told you that she had to obtain the  
6 consent of MCHC for any decision that she made?

7 A. I just gave you one very specific when  
8 she went to business school she had to obtain  
9 approval for that. When she became the president,  
10 when she was appointed the presses of the company  
11 that would have been a decision made at MCHC.

12 Q. How do you know?

13 A. Because that's part of their bylaws.

14 Q. Did she ever tell you that she had to  
15 get MCHC's approval?

16 A. It was widely known, yes.

17 Q. She told you that?

18 A. She told me other presidents of other  
19 companies told me. I know that she went to Japan.  
20 It doesn't just happen.

21 Q. Did she ever tell you that she had to  
22 get MCHC's consent in order to go to business  
23 school?

24 A. Yes.

25 Q. When?

1 J. Fischman

2 A. Before she went to business school.

3 Q. Can you think of any other instances  
4 besides the business school example where she told  
5 you specifically she had to get MCHC's consent?

6 A. I am sure that over the years we had  
7 many, many conversations about multiple things  
8 that went on at MCHA that had to be approved and  
9 I've mentioned them. When the pension program was  
10 restructured. When we were looking at different  
11 insurances. When the company was formed and she  
12 had to ask and they wanted us to be effectively  
13 the legal arm of the company in the United States,  
14 the legal department for the company in the United  
15 States, how that was structured because originally  
16 the company was set up as a profit center. We  
17 were part of a larger organization and then the  
18 company was -- each of those organizations were  
19 broken off and what was left was solely an  
20 administrative department.

21 Q. Were you happy when you learned that  
22 you were going to be promoted to acting general  
23 counsel?

24 A. I had mixed feelings.

25 Q. On balance were you happy?

1 J. Fischman

2 A. Acting general counsel, you said.

3 Q. Acting general counsel?

4 A. On balance I had very mixed feelings.  
5 I was both happy and unhappy.

6 Q. But when I say on balance --

7 A. I was proud that -- I am sorry. I was  
8 proud that I had achieved this which had been a  
9 goal of mine over my 18 year career, but I was  
10 extremely unhappy that after all my years of  
11 experience, knowledge, familiarity with the  
12 businesses had been given an acting role.

13 Q. I understand. You said you had mixed  
14 feelings. I am asking you to in a way balance out  
15 those mixed feelings.

16 On balance, were you more happy or  
17 unhappy?

18 A. I was both happy and unhappy. I would  
19 say that I was -- it was a good split. 51 percent  
20 if you want.

21 Q. 51 percent more happy than unhappy?

22 A. Hard to say.

23 Q. If you were more unhappy than happy,  
24 you would have said no to the position; correct?

25 A. No.

1 J. Fischman

2 Q. You took the position even though you  
3 were more unhappy about it?

4 A. I didn't say I was more unhappy. I  
5 just said it was difficult. It is difficult to  
6 say.

7 Q. But you took the position?

8 A. I took the position because I saw it  
9 as a great opportunity.

10 Q. And you wanted that great opportunity?

11 A. Absolutely.

12 Q. And you received an increase in  
13 salary?

14 A. Absolutely.

15 Q. Were you grateful to the people that  
16 advocated for your promotion?

17 A. I don't know who advocated for my  
18 promotion. I had to guess and also I had to  
19 pretend that certain people who I figured did not  
20 advocate for my promotion I had to pretend and  
21 thank them for it anyway. I was working to get  
22 the full promotion. So from that moment forward I  
23 was doing everything I could to get rid of the  
24 acting part, right.

25 Q. You said you had mixed feelings when

1 J. Fischman

2 you took the job?

3 A. Yes.

4 Q. Have you ever hired anybody to work  
5 under you in an organization?

6 A. Yes.

7 Q. Did you when you hired them want them  
8 to be enthusiastic about their position?

9 A. Yes.

10 Q. If you knew the person had mixed  
11 feelings about taking the position, would you have  
12 hired them?

13 A. If they had told me that they had  
14 mixed feelings about the position I would have  
15 been concerned.

16 Q. Why?

17 A. If I am offering a position I am  
18 offering it at a hundred percent. This position  
19 is yours. You have earned it or we have chosen  
20 you because we believe in you, but that wasn't  
21 what was offered to me, was it.

22 Q. When you hire people to work under  
23 you, are you concerned that if they are not  
24 enthusiastic and they have mixed feelings that  
25 their performance may not be a hundred percent as

1 J. Fischman

2 a result?

3 A. No.

4 Q. Why not?

5 A. Because you are asking me a question  
6 that you are trying to lead me into something and  
7 I am not going to fall for your lead in.

8 Q. I am not playing games. I am just  
9 asking you for your honest views. What you are  
10 telling me actually is that you know that the  
11 right answer is that you would not want to hire  
12 somebody who had mixed feelings and you don't want  
13 to give me the answer because you are afraid of  
14 the consequences, isn't that what you are telling  
15 me?

16 MR. BERMAN: Object to form.

17 A. That's not what I am telling you.

18 Q. What are you telling me?

19 A. Ask me a real question and I will  
20 answer with a real answer. Don't ask me  
21 hypotheticals. With due respect you can ask me  
22 hypotheticals and we will see how it goes. I am  
23 sorry about that Jerry.

24 Q. Is it unreasonable for an employer to  
25 have second thoughts about an employee that has

1 J. Fischman

2 mixed feelings about her job?

3 A. Your hypothetical is too broad for me  
4 to answer.

5 Q. It is not a hypothetical. I am not  
6 asking you to imagine a set of circumstances. I  
7 am asking you to tell me your view as to whether  
8 it is unreasonable or reasonable.

9 A. Unreasonable.

10 Q. Why?

11 A. I don't have an answer for you because  
12 I don't think you are giving me the benefit of a  
13 complete question and it's too broad and too  
14 hypothetical for me to answer.

15 MR. FORTINSKY: I would propose we  
16 take a lunch break if that's okay with  
17 everybody.

18 THE VIDEOGRAPHER: We are off the  
19 record at 12:55.

20 (Luncheon recess: 12:55 p.m.)

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J. Fischman

F T E R N O O N      S E S S I O N

(1:50 p.m.)

J E N N I F E R   F I S C H M A N,

having been previously sworn, resumed the

stand and testified further as follows:

EXAMINATION (Cont'd)

BY MR. FORTINSKY:

THE VIDEOGRAPHER: We are back on the

record at 1:51.

Q. So I would like to continue our

discussion Ms. Fischman.

I meant to ask you before, you were

promoted to assistant general counsel in 2013;

right?

A. Yes.

Q. Who made the decision to promote you?

A. I am not aware of who was consulted

for that decision.

Q. What did you understand the term

acting to mean when you took the position of

acting general counsel?

A. That it was a plate holder.

Q. What does that mean?

A. That it was temporary.

1 J. Fischman

2 Q. And if it was temporary that meant  
3 that it could at some point come to an end; right?

4 A. Yes.

5 Q. And if it came to an end, you would be  
6 reassigned to your previous position?

7 A. I didn't make any assumptions about  
8 it.

9 Q. Eventually you were reassigned to your  
10 previous position; right?

11 A. Yes.

12 Q. And you said that the nature of the  
13 acting general counsel position was that it was  
14 temporary; correct?

15 A. The term acting conveys that meaning.

16 Q. So when you were reassigned to be an  
17 assistant counsel, that was consistent with the  
18 terms of your position as acting general counsel  
19 which you said was temporary as you understood it;  
20 correct?

21 A. I don't think that I ever foresaw  
22 being returned to the assistant general counsel  
23 position because I assumed that I would be made  
24 the full general counsel.

25 Q. I understand that you had confidence

1 J. Fischman

2 in your ability to attain the full general counsel  
3 position, but my question is whether or not the  
4 reassignment to the assistant counsel position was  
5 consistent with the temporary status that you said  
6 the acting terminology conveyed in your acting  
7 general counsel title?

8 A. I am sorry.

9 Could you rephrase the question? I am  
10 having trouble understanding where the question is  
11 in there.

12 Q. When you were reassigned to be  
13 assistant counsel, was that consist with the terms  
14 on which you took the acting general counsel  
15 position?

16 A. I don't know that it was consistent  
17 because I don't know what the terms -- I don't  
18 know that. I don't know what the -- I mean  
19 originally in the first meeting I had with Donna  
20 and I was kind of told it's probably never going  
21 to happen. I couldn't get you through to Japan  
22 and said it is acting. I had two reactions. One  
23 was disappointment as I mentioned, and the other  
24 was I am going to do whatever I can to prove to  
25 everyone that I have earned this position and I

1 J. Fischman

2 belong in this position and that I can do a great  
3 job in this position.

4 So I am not sure that I can answer  
5 your former question as to whether it was  
6 consistent with the terms because I never  
7 anticipated being back in that position.

8 Q. When you were told that you were named  
9 acting general counsel, did you understand that  
10 that meant you could be reassigned to be assistant  
11 counsel?

12 A. I can't say that I contemplated it at  
13 the time.

14 Q. You didn't think about what the terms  
15 of your appointment to become acting general  
16 counsel included?

17 A. That wasn't part of the conversation,  
18 no.

19 Q. I am asking what you perceived.

20 Did you perceive, based on your  
21 conversation with Donna Costa, that by virtue of  
22 being an acting general counsel you could be  
23 reassigned to the assistant counsel?

24 A. Maybe, yes.

25 Q. On the first day of your testimony you

1 J. Fischman

2 said that no one in the history of MCHC or any of  
3 its affiliates had ever been given an acting role  
4 in anything.

5 Do you recall that testimony?

6 A. I probably said something like that.

7 Q. What was the basis for that statement?

8 A. The basis for that statement was that  
9 I had been in the company for at the time eight  
10 years and I had never heard of or met anyone in a  
11 senior position as a president of the many, many  
12 companies and the many roles of people at officer  
13 level, senior level, VP level. I never met  
14 anybody who had been in an acting position.

15 Q. So it was limited to your personal  
16 knowledge and experience; right?

17 A. Yes.

18 Q. You said that the decision not to  
19 promote you to full general counsel was made in  
20 Japan; is that right?

21 A. Yes.

22 Q. What evidence supports that?

23 A. Well, I knew that the decision at this  
24 senior level which would have been the second  
25 highest level position in the company would have

1 J. Fischman

2 been made by the people that were responsible for  
3 the legal department such as Ken Fujiwara, the  
4 former president Yoshisato and probably the board  
5 members who were in Japan and others because for  
6 example, I knew that the decision to promote Donna  
7 Costa to president was made by many of these same  
8 people and that her replacement would then  
9 ultimately also had been an essential element of  
10 that discussion.

11 Q. So you are extrapolating from your  
12 other experiences in the company to speculate  
13 about the role that Japan played?

14 MR. BERMAN: Object to form.

15 A. Yes, because further on, first in that  
16 meeting where she said that I can't get you  
17 through Japan.

18 Then when I went to Greer, South  
19 Carolina and met with two other senior executives  
20 at one of our affiliates and they confirmed that  
21 scenario to me as I knew that. Throughout my many  
22 years at the company I knew that decisions were  
23 generally made on all high level situations. Such  
24 as the directors of each company were made by  
25 parent companies and approved by parent companies.

1 J. Fischman

2 So it was not a surprise to me and I was able to  
3 extrapolate that based on my experience, yeah.

4 Q. You said on the first day of your  
5 testimony that you made your objection to the  
6 acting position well known.

7 What did you mean by well known?

8 A. To Donna Costa I objected to that on a  
9 number of occasions.

10 Q. Anyone else? Did you object to anyone  
11 else, in other words?

12 A. Yeah, I am sure I did. I am sure I  
13 spoke with other colleagues in the company.  
14 Probably someone who I felt I had a friendship  
15 with and maybe I would have mentioned it. I am  
16 certain I mentioned it to Pat Saunders and  
17 probably Brian O'Connors.

18 Q. When you say you mentioned it, were  
19 these in the nature of objections or complaints?

20 A. Well, there is no really -- yes.

21 Q. Would it surprise you to learn that  
22 other executives in the company were taken aback  
23 by somebody making complaints and objections after  
24 having just been promoted?

25 A. Well, I wasn't really promoted, right.

1 J. Fischman

2 So I was promoted, but in an undermined way,  
3 right. I wasn't given the full confidence of the  
4 company. I was given a trial.

5 So it would surprise me to learn that  
6 other people would be surprised when of course  
7 someone who worked so hard would be disappointed  
8 and would object to an acting position when that  
9 person was so qualified, knew the company so well  
10 and had worked so hard for the position.

11 Q. You felt you were not really being  
12 promoted?

13 A. I felt that I was being promoted in  
14 an -- but at the same time undermined because my  
15 authority was not full and everybody knew it was  
16 sort of temporary and I was made fun of by  
17 actually one president, visiting affiliate that  
18 was humiliating, yeah.

19 Q. Who was the president?

20 A. The president of Nippon. Not Nippon.  
21 TSMC. I have to go back and look, but there was a  
22 meeting in our conference room around the end of  
23 April with a new company, a new affiliate company  
24 and the president came and spoke to us and he made  
25 a joke about me being an acting and then one other

1 J. Fischman

2 time that I interacted with him he made a joke  
3 still acting, still pretending.

4 Q. What was the joke? You described the  
5 second but not the first.

6 A. It was the same thing. You know oh,  
7 it was a joke about, that made me, that humiliated  
8 me because it made it look like I wasn't good  
9 enough and it undermined my position.

10 Q. Did any of the -- did you register any  
11 complaints or objections to the acting position  
12 with anyone at MCHC?

13 A. I was told not to speak with the  
14 people at MCHC when I was provided this -- during  
15 that first meeting with Donna.

16 Q. So the answer is no?

17 A. No.

18 Q. It is correct that the answer is no;  
19 correct?

20 A. The answer is no, correct.

21 Q. You said in your complaint and I think  
22 also in some respects in your testimony, that you  
23 were excluded from all meaningful interactions  
24 with the company's Japanese leadership including  
25 Ken Fujiwara and Masanori Sakaguchi.

1 J. Fischman

2 What did you mean by excluded from all  
3 meaningful interactions?

4 A. I had not been to Japan I think for at  
5 least a year when I was made acting GC and it was  
6 surprising to me that I was not going to have an  
7 opportunity to go abroad early on even during the  
8 transition period or even when I first was  
9 officially in the role in April to interact on a  
10 more meaningful way to talk about the department,  
11 to talk about the direction of the businesses, to  
12 have strategic conversations which I was aware  
13 that on many, many occasions my predecessor had  
14 had that opportunity. So I did not -- that's the  
15 answer.

16 Q. And whose decision was it that you  
17 would not have contact with those people in Japan?

18 A. Well, I assumed it was from both of  
19 them as well as Ms. Costa.

20 Q. And who would have those conversations  
21 instead of you?

22 A. Donna Costa.

23 Q. Another woman; right?

24 A. The only other woman in management  
25 worldwide, yes.

1 J. Fischman

2 Q. You said in the complaint too that you  
3 were not permitted to interact with any senior  
4 level personnel situated in Japan.

5 Did anyone ever prohibit you?

6 A. Yes. I was told specifically by Ms.  
7 Costa during that initial meeting not to engage  
8 with them except for on a quarterly report basis.

9 Q. And did you ask why?

10 A. No.

11 Q. Did she explain why?

12 A. No.

13 Q. Did Mr. Sakaguchi ever criticize your  
14 legal advice?

15 A. Ever?

16 Q. Yes.

17 A. I didn't provide legal advice to Mr.  
18 Sakaguchi. He was a lawyer. He was not a client.

19 Q. Did he ever criticize the advice you  
20 had given anyone else?

21 A. Not that I know of or can recall.

22 MR. FORTINSKY: Can you mark as  
23 Fischman Exhibit 19 a document identified  
24 with Bates numbers 1218 through 1229.

25 (Fischman Exhibit 19, a document

1 J. Fischman

2 identified with Bates numbers 1218 through  
3 1229, marked for identification, as of this  
4 date.)

5 Q. I will direct your attention to page  
6 1219 and to the to's and from's indicated above  
7 that e-mail which actually begins on 1218.

8 Do you recognize this e-mail?

9 A. Without knowing the defendants' 1219  
10 through 1223 which are all redacted, I can't  
11 really respond to what Sakaguchi San is responding  
12 to me. So let's let this if you don't mind speak  
13 for itself.

14 Q. On page 1219, do you see where  
15 Sakaguchi San in this e-mail says "MKM is very  
16 unhappy with the ways in which you or MCHA and  
17 your Brazilian lawyers are handling this matters."

18 Do you see that?

19 A. I see that Sakaguchi San wrote that  
20 but what I explained in my response to him is that  
21 in fact, I had not had any responsibility for  
22 managing this matter which was over a decade old  
23 and as far as I can recall, not very many things  
24 occurred during my tenure as general counsel. So  
25 it was no longer in my responsibility, set of

1 J. Fischman

2 responsibilities. This is already after my  
3 demotion.

4 Q. Did you feel as though Mr. Sakaguchi  
5 was condemning your legal advice?

6 A. I believe that he was retaliating  
7 against me at this time.

8 MO MR. FORTINSKY: Move to strike as  
9 nonresponsive.

10 Q. Do you see the line that says "Please  
11 do not continue to condemn my legal advice in such  
12 a public matter" on page 1218?

13 A. Yes.

14 Q. Did you believe at the time Mr.  
15 Sakaguchi was condemning your legal advice?

16 A. I can only say that when he said MKM  
17 is very unhappy with way you and your Brazil  
18 lawyers are handling these matters he was  
19 condemning my legal advice, but I hadn't really  
20 provided any legal advice on this matter. It was  
21 the Brazilian lawyers. I was merely forwarding a  
22 document.

23 MR. FORTINSKY: I would now ask the  
24 reporter to mark as Fischman Exhibit 20 a  
25 document previously identified in this case

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by Bates numbers Defendant 1208.

(Fischman Exhibit 20, a document previously identified in this case by Bates numbers Defendant 1208, marked for identification, as of this date.)

Q. Do you recognize this e-mail?

A. I do.

Q. What is it?

A. This is an e-mail that Sakaguchi San sent me on 11/5/2014. This was a misunderstanding that he understood that I had violated some confidentiality that he had provided information to me about something, but there was another witness in the room at the time. Mika Usame, U-S-A-M-E and she explained to Yoshisato San, the president of the company at the time, and to Donna that I had not violated any confidentiality and I had never disclosed any confidential information that he had provided.

So while this e-mail may exist in the records, there were events that occurred after this e-mail that then did not go back and respond to it. There was no reason to. It was taken care of by Miko, our Japanese legal intern, who had

1 J. Fischman

2 been present at the meeting and knew that I had  
3 not violated any confidentiality.

4 Q. Did you perceive this as being an  
5 unfair criticism of your performance as a lawyer?

6 A. Yes. Not a lawyer. I felt that he  
7 had jumped to a conclusion and instead of asking  
8 for something to be kept confidential first of  
9 all, and then he jumped to a conclusion that I  
10 would violate his trust which I had no intention  
11 of doing. That was important to me.

12 Q. But you perceive this to be an unfair  
13 criticism of your work?

14 A. I think this was an unfair criticism  
15 of my trust.

16 Q. But it was a criticism; right?

17 A. Yes.

18 Q. Have you reviewed the documents  
19 produced in this litigation?

20 A. Some of them.

21 Q. Not all of them?

22 A. No.

23 Q. Are you aware that Mr. Sakaguchi and  
24 Mr. Fujiwara persuaded Donna Costa to demote you  
25 rather than terminate you?

1 J. Fischman

2 A. I have seen there are documents where  
3 there are discussions about that which shows how  
4 influential they were on the hiring and firing and  
5 demoting of me completely and completely and  
6 utterly in control of it.

7 MR. FORTINSKY: Let's mark as Fischman  
8 Exhibit 21 a document produced with Bates  
9 number Defense 1067 and 1068.

10 (Fischman Exhibit 21, a document  
11 produced with Bates numbers Defendant 1066  
12 through 1068, marked for identification, as  
13 of this date.)

14 Q. Let me direct your attention to page  
15 1068 and ask you whether you have seen this  
16 document before?

17 A. Yes.

18 Q. In what context?

19 A. In the context of this litigation.

20 Q. Do you see the line that reads "I  
21 would like your thoughts on the following: Would  
22 you truly prefer to keep Jennifer as GC knowing  
23 all the people that are miserable as a result."

24 Do you see that line?

25 A. Yeah, I do see that line.

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Q. And this is an e-mail from Donna Costa; correct?

A. It is. It appears to be.

Q. She was your boss --

A. She was the president of the company at the time.

Q. And she was your boss at the time?

A. Yes.

Q. Do you think this e-mail reflected how she honestly felt?

A. I can't say how she honestly felt.

Q. Why do you think Donna Costa sent this to Ken Fujiwara?

A. I don't know.

Q. Is there any reason you can think of why she would say this other than this reflects her true feelings?

A. I can't answer for how her true feelings whether they were reflected in this document or whether this document is a pretext for my demotion.

Q. Do you think it was a pretext?

A. Yes.

Q. Why?

1 J. Fischman

2 A. Because Donna made a concerted effort  
3 starting in July of 2015 to paper the record with  
4 negative comments about me as a pretext to demote  
5 me.

6 Q. For what purpose?

7 A. Because I was doing a very good job  
8 and Japan did not want me in the role and they  
9 needed to find a way to get rid of me.

10 Q. Why would Donna want to paper the  
11 record to your disadvantage?

12 A. To avoid litigation like this.

13 Q. So you think that Donna, the fix was  
14 in between Donna and the people in Japan?

15 A. A hundred percent.

16 Q. You think they had candid discussions  
17 in which they were plotting to get rid of you,  
18 that's what you think?

19 A. I think that they had candid  
20 discussions always and in fact, the record  
21 reflects almost no documentation from prior to my  
22 promotion in 2014 because Donna almost never wrote  
23 things down unless she wanted to have a record.  
24 She had many conversations with Japan.

25 Q. Have you in your role ever done

1 J. Fischman

2 business with people in Japan?

3 A. Yes.

4 Q. Of course you have; right?

5 A. Of course.

6 Q. And Japan is -- is there ever a time  
7 when the Japanese business day coincides with the  
8 US business day?

9 A. No. That's why we worked very late at  
10 night and very early in the morning.

11 Q. And that's why people communicating  
12 with Japan from the United States and vice versa  
13 typically put things in e-mails; right?

14 A. Not sensitive things. We would  
15 typically set up phone calls.

16 Donna had been working with Ken  
17 Fujiwara for over 20 years and with other high  
18 level executives in Japan for 20 years and had  
19 very long standing relationships with many people  
20 who had come and worked in New York for a time  
21 period and then returned to Japan. So I know that  
22 she did have multiple conversations by phone  
23 frequently and by the way, she wasn't always in  
24 New York. She may have been in Japan. She may  
25 have been in Europe. Time differences are

1 J. Fischman

2 sometimes less.

3 Q. If Donna's objective was to put you  
4 back in the assistant counsel role, wouldn't it  
5 have been easier for her not to elevate you to  
6 acting general counsel in the first place?

7 A. I can't answer that. I can't say what  
8 would have been easier or harder for Donna.

9 Q. Let's turn to the next e-mail on  
10 Defendant' Exhibit 1067. You see the line where  
11 it says in the third paragraph "Jennifer has been  
12 sometimes difficult for us."

13 Do you see that?

14 A. I do.

15 Q. Do you think that reflected how Mr.  
16 Fujiwara honestly felt?

17 A. I don't know what that is based on. I  
18 never heard any concerns that Ken Fujiwara had  
19 ever raised about me.

20 Q. Is there any reason he would say  
21 something that didn't reflect his true beliefs?

22 A. I can't say whether this is true  
23 beliefs or not.

24 MR. FORTINSKY: Let me ask the  
25 reporter to now mark as Exhibit 22 what's

1 J. Fischman

2 been produced as Defense 1109 and 1110.

3 (Fischman Exhibit 22, a document  
4 Bates stamped 1109 and 1110, marked for  
5 identification, as of this date.)

6 Q. Directing your attention to the third  
7 paragraph in the e-mail that begins Dear Yoshisato  
8 San on page 1110. Let me direct your attention to  
9 the line that says "The bad news is that things  
10 are not going well with Jennifer. She has  
11 improved in many ways, but our fundamental  
12 concerns remain and I need to decide next steps."

13 Do you see that?

14 A. Yeah.

15 Q. The third paragraph.

16 Is there any reason to believe that  
17 Donna Costa did not believe what she wrote to  
18 Yoshisato San in that e-mail?

19 A. No. I think she did believe that,  
20 mm-hmm.

21 Q. And why do you think -- what do you  
22 think was the basis for her belief?

23 A. I think that she created a set of  
24 circumstances and then made things very difficult  
25 and then she never, they never wanted me to be in

1 J. Fischman

2 this position as I was in the position effectively  
3 from the beginning of the year to mid July doing a  
4 fine job and then suddenly she realizes we are  
5 getting closer to the end of the year. I am going  
6 to have to create a situation where she is not  
7 going to be in this position. People don't want  
8 her there. So she starts telling everybody that I  
9 am terrible, but I haven't done anything terrible  
10 at all except she is telling everybody how  
11 terrible I am and yet there is no instance of me  
12 at all to this point. So she is like starting  
13 this whole path to get rid of me because I was  
14 never supposed to have the position to begin with  
15 so she has to do this.

16 Q. What is your view as to why she  
17 elevated you to the acting general counsel  
18 position only to take it away a few months later  
19 if it is not based on your performance?

20 A. I was a place holder until she could  
21 hire someone like Nick to replace me.

22 Q. Do you have any evidence to suggest  
23 that -- withdrawn.

24 When you say someone like Nick, what  
25 do you mean?

1 J. Fischman

2 A. A man.

3 Q. Do you have any evidence to support  
4 the idea that Donna Costa was unable to find a man  
5 to serve as general counsel in early 2015?

6 A. Yes.

7 Q. What evidence is that?

8 A. The evidence that you produced is that  
9 she was not permitted to look for another person  
10 at that time while she was moving into her role as  
11 president and she asked me to be the acting  
12 general counsel.

13 Q. So your inference is that the true  
14 decision was made in Japan; is that what you are  
15 saying that Donna's hands were tied?

16 A. Yes.

17 Q. So why would people in Japan not want  
18 somebody, not want Donna to go out and hire a man  
19 if that's what they really wanted?

20 A. Let me give you the context in which  
21 we are working here. We are in a company with  
22 69,000 employees with one woman in an executive  
23 position. In December of 2015 I am only, after  
24 eight years of stellar reviews and high  
25 performance and knowledge of the companies and

1 J. Fischman

2 maybe nary an e-mail that was negative about my  
3 performance, no one is perfect as you well know,  
4 but I had grown. I had performed. I handled more  
5 than two thirds of the affiliate companies and  
6 provided all of the legal work okay, until this  
7 point, but I was given an acting role and then a  
8 year later a man was given, a man with less  
9 qualifications who hasn't been involved in the  
10 business for eight years, who has eight years less  
11 experience than me is given the full general  
12 counsel position. Why, because he is a guy. He  
13 can go to baseball games with them. He can hang  
14 out and have a beer. They don't feel comfortable  
15 around women.

16 MO MR. FORTINSKY: Move to strike as not  
17 responsive.

18 Q. When you were appointed acting general  
19 counsel, is it your testimony that the people  
20 making the decision, whoever that was, could not  
21 find a man to serve in that role?

22 A. I believe that they could not find a  
23 man at that moment because they were not looking.  
24 They wanted a temporary person until Nick was  
25 available later that year.

1 J. Fischman

2 Q. Andrew Sezar was working in that  
3 department at the time; wasn't he?

4 A. Andrew Sezar was a Pharma lawyer  
5 working in the New Jersey office not in the main  
6 office responsible for one business unit with less  
7 experience than me and performance issues.

8 Q. You were more qualified than he was,  
9 in other words?

10 A. He had performance issues.

11 Q. So if I understand your testimony  
12 right, they had a choice between a woman who is  
13 qualified and a man who is less qualified and they  
14 chose a woman; is that right?

15 A. No. I don't believe they considered  
16 Andy Sezar at all for the position. I don't  
17 believe he was in their sight line. I don't  
18 believe that anybody considered him until two  
19 years or four years later when it was convenient  
20 to say we considered Andy Sezar for the role.

21 Q. He was working in the general  
22 counsel's office at the time; wasn't he?

23 A. He was working in our New Jersey  
24 Pharma company at the time, but he was a member of  
25 the legal department, yes.

1 J. Fischman

2 Q. And he a member of the legal  
3 department and he was a man; right?

4 A. And he was a man.

5 Q. And he was less qualified than you;  
6 correct?

7 A. You will have to speak to him about  
8 his qualifications. My understanding is that he  
9 was less qualified, yes.

10 Q. You perceived him to be less  
11 qualified?

12 A. I didn't perceive him because nobody  
13 ever asked me to compare myself against him.

14 Q. As you sit here today, do you think  
15 you were more qualified for that position or he  
16 was?

17 A. I was but I was also more qualified  
18 than every single person in this room except for  
19 Ms. Costa.

20 Q. And the company chose you over a less  
21 qualified man; correct? The company chose you;  
22 correct?

23 A. I don't know that the company  
24 considered anyone at that time other than me as a  
25 place holder, but I certainly wasn't considered

1 J. Fischman

2 the general counsel.

3 Q. In the e-mail we just discussed on  
4 page 1110 Donna says, Ms. Costa says speaking of  
5 you "She has improved in many ways."

6 Do you see that?

7 A. Mm-hmm.

8 Q. Do you think she would say that if she  
9 were trying to create a record that -- if she was  
10 doing this solely to create a record that your  
11 performance was poor?

12 MR. BERMAN: Object to form.

13 A. Sure.

14 Why not?

15 Q. Do you recall saying that Mr. Oliva  
16 was paid more than you were?

17 A. Yes.

18 Q. What's the basis of that allegation?

19 A. I knew that he received a car stipend  
20 and parking stipend that was more than me and I  
21 believe that he also made more as a general  
22 counsel.

23 Q. What's the basis of that belief?

24 A. Of course I am not privy to his  
25 salary. We have asked for it, but I believe he

1 J. Fischman

2 was.

3 Q. You said before that you had sometimes  
4 hired people to work under you?

5 A. Yeah.

6 Q. Have you ever hired somebody to work  
7 under you who had previously been working at  
8 another company?

9 A. Yes.

10 Q. Would you agree that when you hire  
11 somebody you have to negotiate the person's  
12 compensation to make sure the compensation package  
13 is attractive enough?

14 MR. BERMAN: Object to form.

15 A. I did not typically have that  
16 authority to do that negotiation. So no, I would  
17 say no.

18 Q. Meaning you don't have any experience  
19 enough to give me the answer?

20 MR. BERMAN: Object to form.

21 A. I would say I never had the experience  
22 where I needed to negotiate to make an offer more  
23 attractive to attract a candidate. The salary was  
24 the salary, but that's what it was.

25 Q. Would it surprise you to find out that

1 J. Fischman

2 companies sometimes have to negotiate to recruit  
3 attractive candidates by changing the compensation  
4 package?

5 MR. BERMAN: Object to form.

6 A. I imagine that in some companies that  
7 would be the case.

8 Q. Do you think it's unfair for a company  
9 to pay an acting general counsel who is perceived  
10 not yet ready to serve as full general counsel  
11 less than a general counsel who is perceived to be  
12 ready for the job?

13 MR. BERMAN: Object to form.

14 A. Can you read back the question please?  
15 (Record read.)

16 A. Of course I do, a hundred percent.

17 Q. Do you believe that's unfair?

18 A. I believe that's discrimination  
19 because the only reason I was paid less and was  
20 told I was not ready to take on the job is because  
21 I was a woman.

22 Q. I am not talking about you. Nothing  
23 personal. I am not talking about you. My  
24 question is in general terms.

25 Were you answering my question based

1 J. Fischman

2 on yourself?

3 A. I was basing it on my experience. I  
4 am the one being deposed. Sorry.

5 Q. I am going to ask the same question  
6 again and I want you to answer the question in  
7 general terms without regard to you personally.  
8 Just as a general proposition.

9 Do you think it is unfair for a  
10 company to pay an acting general counsel who is  
11 perceived to be not yet ready to serve as full  
12 general counsel less than a general counsel who is  
13 perceived to be ready for the job?

14 MR. BERMAN: Object to form.

15 A. I guess I would have to say I believe  
16 that would be unfair unless there were  
17 circumstances that justified it. So I would say  
18 that would be unfair.

19 Q. The circumstances I am asking you to  
20 consider is whether or not, the circumstances I am  
21 asking you to consider is that the acting general  
22 counsel is not yet ready for the role. Is  
23 somebody they hope can grow into the role.

24 Under those circumstances, would it be  
25 reasonable for a company to pay the acting general

1 J. Fischman

2 counsel perceived to be less than ready to pay  
3 that -- withdrawn.

4 MR. BERMAN: Object to form.

5 Q. Under those circumstances, would it be  
6 reasonable for a company to pay the acting general  
7 counsel perceived to be not yet ready for the full  
8 general counsel role less than the full general  
9 counsel would otherwise get?

10 MR. BERMAN: Object to form.

11 A. I believe because I cannot answer a  
12 hypothetical, sorry, other than my own experience,  
13 I am going to say it would be blatantly unfair.

14 Q. It is blatantly unfair.

15 Why is it blatantly unfair?

16 A. Because presumably the acting general  
17 counsel is qualified and the only reason she is  
18 not qualified is because of her gender and  
19 therefore --

20 Q. I didn't say anything about gender.  
21 Let's assume these are both men. It has nothing  
22 to do with gender.

23 A. I don't have enough facts to answer  
24 the question.

25 Q. Here are the facts. The two

1 J. Fischman

2 candidates are in every respect the same except  
3 that the one person is an acting general counsel  
4 who is perceived to be not yet ready for the role  
5 and the other person is a full general counsel who  
6 is perceived to be ready for the role.

7 MR. BERMAN: Object to form.

8 Q. You can assume for argument's sake  
9 that they are being hired at the same time in two  
10 different affiliates of the same organization and  
11 everything else is the same. One of them is hired  
12 to be an acting general counsel because he, he is  
13 not yet perceived to be ready for the full role  
14 and the other one is hired to be a full general  
15 counsel because he is perceived to be ready for  
16 the full role.

17 MR. BERMAN: Object to form.

18 Q. Is it your testimony that it would be  
19 unfair for the company to pay the first one, the  
20 acting general counsel less?

21 MR. BERMAN: Object to form. Please  
22 note my continuing objection for this line  
23 of questioning.

24 A. Without knowing what the perception on  
25 readiness entails, I would have to say that they

1 J. Fischman

2 should be paid the equivalent if the job duties  
3 are equivalent.

4 Q. So maybe the reason you have objected  
5 in this complaint has nothing to do with gender at  
6 all?

7 MR. BERMAN: Object to form.

8 Q. You filed a complaint that alleged  
9 there was gender discrimination, but you've just  
10 told us that you think it is always, even where  
11 everything is otherwise the same, it is always  
12 unfair to pay the acting general counsel less than  
13 the general counsel?

14 MR. BERMAN: Object to form. This is  
15 palpably improper. What's fairness? There  
16 is no element of fairness.

17 MR. FORTINSKY: You can't testify.

18 MR. BERMAN: I am not testifying. You  
19 are badgering the witness --

20 MR. FORTINSKY: I am not badgering the  
21 witness.

22 MR. BERMAN: -- and asking the same  
23 question five times. Please move on.

24 MR. FORTINSKY: Could you read back  
25 the last question?

1 J. Fischman

2 A. Is there a question? I thought he was  
3 testifying.

4 (Record read.)

5 Q. Do you think it is unfair to pay an  
6 employee less, one employee less than another  
7 because he has lesser qualifications?

8 MR. BERMAN: Object to form.

9 A. I think that salary is very  
10 subjective. However, I think that usually we base  
11 our salary on roles and responsibilities plus  
12 qualifications and level of experience.

13 Q. So is that a yes or no?

14 A. Honestly, I don't even know what your  
15 question is. I am sorry. You keep going into  
16 these hypotheticals and I don't have answers to  
17 hypotheticals. I have answers to my personal  
18 experience.

19 MR. FORTINSKY: Could you read the  
20 question back please?

21 (Record read.)

22 A. I think that there are many occasions  
23 when an employee is paid less based on their  
24 qualifications or their lesser qualifications than  
25 another employee.

1 J. Fischman

2 Q. Is there ever a time when it is  
3 unreasonable to pay one employee less than the  
4 other when that employee has lesser  
5 qualifications?

6 A. I am sorry Lynne, would you read that  
7 back please?

8 (Record read.)

9 A. I think that's what I just said, that  
10 there is a time when employees are paid different  
11 amounts based on their experience and  
12 qualifications.

13 Q. In 2015 you received a full year's  
14 bonus; right?

15 A. I did.

16 Q. Who made the decision to pay you the  
17 full bonus?

18 A. I don't know.

19 Q. You got a raise for 2016; right?

20 A. Yes, I did.

21 Q. Do you know who made the decision to  
22 pay you that raise?

23 A. I believe -- let me state no, I don't  
24 know who made that decision.

25 Q. Do you know who made the decision to

1 J. Fischman

2 terminate your employment with MCHA?

3 A. No. I don't know who made that full  
4 decision.

5 Q. Do you know whether anyone from MCHC  
6 played a role?

7 A. I believe that they must have played a  
8 role, yes.

9 Q. Based on the considerations we  
10 discussed earlier?

11 A. Yes.

12 Q. Anything beyond that?

13 A. No.

14 MR. FORTINSKY: I now ask the reporter  
15 to mark as Fischman Exhibit 23 what was  
16 marked as 490, produced as Defendants' 490.

17 (Fischman Exhibit 23, a document  
18 Bates stamped 489 and 490, marked for  
19 identification, as of this date.)

20 Q. Ms. Fischman, take your time to read  
21 that but the document I am just asking you about  
22 490.

23 And then my question is going to be  
24 whether you have seen this before?

25 A. Yes.

1 J. Fischman

2 Q. In the context of this litigation?

3 A. In the context of this litigation.

4 Q. Do you see the line where Mr. Oliva  
5 writes "I have lost the ability to trust Jennifer  
6 in her role and I have determined to end her  
7 employment."

8 Do you see that?

9 A. Yeah.

10 Q. Do you have any reason to believe that  
11 that line does not reflect how Mr. Oliva honestly  
12 felt at that time?

13 A. I have reason to believe that this was  
14 the end of a long year of him papering the record  
15 to get rid of me and creating a false narrative of  
16 the situation that occurred.

17 Q. So he was, in your view, working for  
18 the full year before that to paper the record; is  
19 that your view?

20 A. I think as we have seen here through  
21 this litigation that he made several notes to the  
22 file from day one from our very first meeting that  
23 is not a normal way to interact with your  
24 subordinates where he literally was creating  
25 negative comments about me down to like my offer

1 J. Fischman

2 of gum to him as aggressive behavior.

3 So yeah, I think that he was told  
4 before he arrived that it was up to him to get rid  
5 of me and that he had a year to do it and that he  
6 probably believed the statute of limitations on my  
7 demotion ran a year and that was it. He found  
8 some miscommunications to terminate me and that  
9 everybody was just waiting for this to occur. So  
10 the approvals were already in hand.

11 Q. So in your view there were other  
12 instances before this in which Mr. Oliva had found  
13 grounds, true or untrue, to criticize you and to  
14 paper the record accordingly?

15 A. We have seen them in this litigation.

16 Q. But there were a number of them;  
17 right, in your view?

18 A. No. There were three or four over the  
19 course of a year of his negative impression of my  
20 behavior which was never shared with me, but now I  
21 can see that he took comments or interactions,  
22 wrote them down in a negative way so he would have  
23 a basis to terminate me when in fact they are  
24 complete spins of what actually occurred in the  
25 meetings and I don't have the opportunity to

1 J. Fischman

2 respond to them.

3 Q. Why do you think he didn't terminate  
4 you sooner than he did if there were these three  
5 or four other instances?

6 A. I think because I was demoted on  
7 November 11, 2015 and I think there was a great  
8 concern of the company that I was going to bring a  
9 lawsuit for discrimination, for gender  
10 discrimination because I had complained about  
11 feeling discriminated when I was demoted and I  
12 believe that they wanted to hold on to me a year  
13 so that it would seem less associated with those  
14 actions. Everything they did was leading to this.

15 Q. To the extent there were concerns  
16 about being perceived as acting for discriminatory  
17 reasons, wouldn't those reasons and wouldn't those  
18 concerns have been equally true at the point where  
19 you were actually terminated?

20 A. Yes, and they remain true today.

21 Q. So then my question goes back to why  
22 do you think they didn't terminate you if it was  
23 just because they were trying to get rid of you?  
24 Why do you think they didn't terminate you six  
25 months earlier?

1 J. Fischman

2 A. Because the claim would have been  
3 stronger, much closer to the November demotion.

4 Q. Why?

5 A. It is closer in time.

6 Q. You think your claim now is weaker  
7 relatively speaking?

8 A. No. It is just as strong.

9 Q. It is just as strong, exactly.  
10 Why did they terminate you when they  
11 did?

12 A. I can't say. I don't know what was in  
13 their head.

14 Q. Did it have anything to do with the  
15 Genomatica episode that you were asked about  
16 earlier today?

17 A. I couldn't answer that.

18 Q. You've offered us a theory as to why  
19 the company terminated you and so I am just trying  
20 to understand better in the context of this  
21 deposition what you think the reasons?

22 A. I can't say what the reasons were of  
23 why they did not take action sooner except for  
24 that I was doing my job and I was doing it well  
25 and I also believe that Nick needed to be in the

1 J. Fischman

2 job for a full year with me supporting him and  
3 providing legal advice to 22 or 23 different  
4 companies while he could settle into the position  
5 and get a full understanding of the scope of the  
6 position before terminating me because terminating  
7 me would leave a huge void in the department if he  
8 had done it earlier.

9 Q. And you think those factors that you  
10 just described changed over the last six months,  
11 let's say, of your work at MCHA?

12 A. Yeah. He was in the position longer.

13 Q. And you said that you were performing  
14 well earlier; right?

15 A. Yes.

16 Q. And throughout the period after you  
17 were moved into the assistant general counsel  
18 position after having been the acting general  
19 counsel position, in your view, your performance  
20 was good; correct?

21 A. Yes.

22 Q. And then came the Genomatica episode  
23 where Mr. Oliva thought your performance was not  
24 good; correct?

25 MR. BERMAN: Object to form.

1 J. Fischman

2 A. I had no idea that he felt my  
3 performance was not good.

4 Q. Do you think he perceived that you  
5 made a mistake in connection with the Genomatica  
6 episode?

7 A. I think he understands that I made a  
8 miscommunication and I did make a mistake and I  
9 fully admitted to that mistake of not  
10 communicating with a lower level window person at  
11 MCHJ but that I had the full authority from Nick  
12 to make the offer of settlement. So what I think  
13 is he used a miscommunication as a basis for  
14 termination but not an ethical breach.

15 Q. So you think, let me ask you, do you  
16 think that Mr. Oliva misperceived what really  
17 happened in the Genomatica settlement  
18 negotiations?

19 A. No. I don't think he misperceived  
20 anything. I think he knows exactly what happens  
21 because he was part of all of it.

22 Q. You said you had made a  
23 miscommunication; right?

24 A. Yes.

25 Q. Do you think that he didn't understand

1 J. Fischman

2 what you had communicated? Do you think he  
3 unfairly perceived what you did with respect to  
4 this miscommunication?

5 A. I don't think he unfairly perceived  
6 anything. I think he was trying to use what was  
7 effectively a misunderstanding and a  
8 miscommunication as something bigger than it was.  
9 So that he could use it as a basis for termination  
10 because what we really had at its base was just a  
11 failure to communicate with a low level person in  
12 the legal department at MCHJ, not a failure of  
13 authority of which we had plenary to settle a  
14 litigation.

15 Q. There was a failure to communicate.  
16 Did you think that Mr. Oliva blamed  
17 you for that?

18 A. We know that he did ultimately yeah,  
19 because I apologized for it I and took full  
20 responsibility for it.

21 Q. Did you perceive that -- withdrawn.  
22 Could I hear back the last question  
23 and answer?

24 (Record read.)

25 Q. Do you think it was wrong to fire you

1 J. Fischman

2 on that basis?

3 A. Yes, a hundred percent, mm-hmm.

4 Q. Do you think you were fired on that  
5 basis?

6 A. No.

7 Q. Why not?

8 A. I think that I was fired because I was  
9 retaliated against for all the things I had  
10 complained about that year starting with going all  
11 the way back to complaining about not being given  
12 the acting general counsel. Then complaining that  
13 they weren't removing the acting back again in  
14 August of 2015. Then complaining when I was  
15 demoted that they put a man who had less  
16 experience and less qualifications in the position  
17 and complaining that a man had replaced me.

18 Then complaining about Amber Todd and  
19 Dan Todd and the mistreatment and discrimination  
20 against her.

21 Then complaining about the  
22 discrimination against Anne Riley and the way that  
23 investigation was handled.

24 So I believe that I was terminated for  
25 retaliatory reasons based on my gender that was a

1 J. Fischman

2 long line of discrimination.

3 Q. So you were retaliated against for  
4 making a lot of complaints against the company; is  
5 that right?

6 A. Yes. I was retaliated and  
7 discriminated against for making complaints about  
8 discrimination at our company.

9 Q. Who did you talk to about being  
10 terminated?

11 MR. BERMAN: Object to form.

12 A. What does that mean?

13 Q. Other than counsel.

14 In the immediate wake of your  
15 termination, who did you talk to about those  
16 events other than counsel?

17 A. Family and friends I am sure and  
18 obviously Department of State because I had to  
19 file unemployment.

20 Q. What did you say to your friends about  
21 the termination?

22 A. I told them that I was terminated.

23 Q. Did you tell them what the basis of  
24 the termination was?

25 A. Yes.

1 J. Fischman

2 Q. What did you say?

3 A. I said that Mitsubishi terminated me  
4 because I am a woman in retaliation for my  
5 complaints about discrimination in the company and  
6 that they came up with a pretextual reason based  
7 on miscommunication between me and Japanese legal  
8 department.

9 Q. And then you filed a complaint with  
10 the EEOC?

11 A. In May of 2017.

12 MR. FORTINSKY: Can we mark as Exhibit  
13 24 a copy of that EEOC complaint which was  
14 previously identified as 326.

15 (Fischman Exhibit 24, a copy of the  
16 EEOC complaint Bates stamped Fischman 326  
17 through 328, marked for identification, as  
18 of this date.)

19 Q. Is this document Exhibit 24 the EEOC  
20 complaint that you filed?

21 A. Yes.

22 Q. More formally labeled Charge of  
23 Discrimination; is that right?

24 A. It is.

25 Q. What employer did you name in this

1 J. Fischman

2 complaint? Who did you identify as your employer  
3 in this complaint?

4 A. In this complaint I named MCHA.

5 Q. Do you see that there is room beneath  
6 where you put the name and address of MCHA for  
7 another employer to be listed, another name and  
8 address that you listed?

9 A. Looks like that's for labor  
10 organization employment agency or apprenticeship  
11 committee.

12 Q. It allows you to name whatever agency  
13 you are complaining against, but my question is  
14 you see there is a second blank beneath the part  
15 where it asks you for the name of the employer; is  
16 that right?

17 A. Yes, but I didn't fill this. You know  
18 I didn't fill this form out with my typewriter,  
19 right.

20 Q. Who filled it out?

21 A. My counsel at the time which is a  
22 different counsel than is sitting here.

23 Q. And that was at your direction; right?

24 MR. BERMAN: Object to form.

25 A. I never filled out a charge of

1 J. Fischman

2 discrimination. So he asked me questions over the  
3 phone and yeah, and he filled it out.

4 Q. Turning your attention to the third  
5 page of this exhibit, do you see your signature on  
6 this page?

7 A. I do.

8 Q. Did you read the document before you  
9 signed it?

10 A. I did.

11 Q. And you didn't object that the counsel  
12 had failed to put in MCHC as one of your  
13 employers; did you?

14 MR. BERMAN: Object to form and I will  
15 counsel the witness not to reveal any  
16 privileged communications with her counsel.

17 A. You will have to read back the  
18 question please.

19 (Record read.)

20 MR. BERMAN: Object to form.

21 A. We put down MCHA because I knew that  
22 MCHC would learn about this complaint as they knew  
23 about every major claim against the company.

24 Q. Did you mention MCHC anywhere in the  
25 body of the complaint?

1 J. Fischman

2 A. I do talk about Japan throughout the  
3 complaint.

4 Q. But you don't mention MCHC, do you?

5 A. I mention Japanese executives and  
6 throughout the complaint.

7 Q. You don't mention MCHC, do you?

8 A. Not in this two-page document I do  
9 not.

10 Q. Did you at this time at the time that  
11 this charge of discrimination was filed, did you  
12 perceive that MCHC was your employer?

13 A. I believe that both MCHC and MCHA were  
14 a unified unit where most of the direction and  
15 control had been by the parent company of this a  
16 hundred percent wholly owned subsidiary. While my  
17 paycheck in the State of New York came from MCHA  
18 who was writing the paycheck, I knew that MCHC  
19 controlled the operations.

20 MO MR. FORTINSKY: Move to strike as not  
21 responsive.

22 Q. At the time that you signed this  
23 complaint, did you perceive that MCHC was your  
24 employer?

25 A. I think I said yes, I did. I believed

1 J. Fischman

2 it all my years.

3 Q. Then why if you perceived that did you  
4 not insist that MCHC be listed in the second blank  
5 where the employer's name is supposed to appear?

6 MR. BERMAN: Object to form.

7 A. As I said, I never filled one of these  
8 out so I just didn't write it in.

9 Q. Had you ever seen an EEOC complaint of  
10 any type before signing this one?

11 A. I think I received copies of them over  
12 the years. No.

13 An actual complaint yeah, maybe a few  
14 times over the years.

15 Q. And you were functioning as an  
16 employment lawyer with MCHA; correct?

17 A. I wasn't functioning as an employment  
18 lawyer. I never held myself out as an employment  
19 lawyer. I was a generalist. So I was as much an  
20 employment lawyer as any trust lawyer, as a  
21 contracts lawyer, as an environmental lawyer, as  
22 an IP lawyer. I had experience in it and I had  
23 more experience than other people in the  
24 department. So as employee matters came up I was  
25 primarily responsible for them especially for the

1 J. Fischman

2 businesses I supported.

3 Q. Did you read this EEOC complaint  
4 carefully before you signed it?

5 A. I am sure I did.

6 Q. You signed it under penalty of  
7 perjury; right?

8 A. I am sure I did.

9 Q. And you signed it before a notary;  
10 right?

11 A. Yes, I did.

12 Q. Was there ever a time -- withdrawn.

13 When employees brought EEOC complaints  
14 against MCHA or even its affiliates, did you have  
15 any role in handling those complaints?

16 A. Once we were at the point where  
17 someone had filed a claim of discrimination with  
18 the EEOC we frequently would hire outside  
19 employment counsel.

20 Q. And would you be involved in hiring  
21 that outside counsel?

22 A. Occasionally.

23 Q. So you have had experience in dealing  
24 with EEOC complaints at least to the extent of  
25 reviewing and reaching out to hire counsel to

1 J. Fischman

2 assist you; is that right?

3 A. I would say over my tenure at  
4 Mitsubishi I maybe saw one or two EEOC complaints.  
5 I wouldn't say that I saw even a handful. I  
6 wouldn't say I was very familiar with them, no.

7 Q. What did you do with respect to those  
8 one or two complaints?

9 A. I would say that I probably hired  
10 outside counsel to manage the case.

11 Q. Anything else?

12 A. No.

13 Q. Moving to another subject.

14 A. Okay.

15 Q. What actions by the defendants did you  
16 regard as discriminatory?

17 A. I think I just enumerated them.

18 Q. I know it's come up in different  
19 context, but I am asking you for kind of an  
20 overview of what actions did you regard as  
21 discriminatory?

22 A. I think I put all those actions  
23 enumerated in great detail in my complaint.

24 Would you like me to go back and read  
25 my complaint into the record?

1 J. Fischman

2 Q. No.

3 Just from your own knowledge and your  
4 own belief, in what ways do you believe you were  
5 discriminated against?

6 A. Okay. I believe I was discriminated  
7 against, as we have established, at the time when  
8 I was not made the full general counsel.

9 I believe I was discriminated against  
10 when I was asked, when I asked again to be  
11 promoted to the full general counsel and I was  
12 not.

13 I believe I was discriminated against  
14 when I was demoted for pretextual nonsensical  
15 reasons.

16 I believe I was discriminated against  
17 when the company, when MCHC approved the hiring of  
18 Nick Oliva who had less experience, less current  
19 business knowledge of the Mitsubishi company  
20 businesses, had gone to a lesser law school. Had  
21 not worked in the national law firm. Had ten  
22 years less or eight years less experience than I  
23 had and was given the full general counsel  
24 position without any trial or acting role.

25 I believe I was discriminated against

1 J. Fischman

2 and retaliated against after raising the issue  
3 about Amber Todd's discrimination and then being  
4 told in my review within just a month later that I  
5 needed improvement in my communication.

6 I believe I was discriminated against  
7 and retaliated against when I complained about  
8 discrimination in the investigation of Anne  
9 Riley's and some other women's complaints about  
10 vice-president in the Pharma company and I  
11 suggested that we handle it a different way and  
12 that what we were doing was discriminatory and  
13 that Nick only wanted me to interview the women  
14 and then he was going to handle the man. I felt  
15 that entire investigation was a farce and I  
16 complained to him about it and I was retaliated  
17 against.

18 I believe I was discriminated against  
19 on November, early November when a decision in  
20 Japan was made that I as lead counsel would not be  
21 attending the settlement conference that consisted  
22 of a male judge, a male opposing counsel, a male  
23 client and a male outside counsel at the ENE on  
24 November 16, 2016. I complained to Nick Oliva  
25 that moment as he stood in my office and said this

1 J. Fischman

2 culture is so misogynistic. Of course they chose  
3 you over me and I believe I was retaliated against  
4 and terminated under a pretextual context.

5 Q. We have talked about a lot of those  
6 issues already in the course of today and the last  
7 time too.

8 Are there any facts that you have that  
9 support those statements that you have not already  
10 put on the record?

11 A. I think we put them all on the record  
12 or we've disclosed them to defendants and they can  
13 chose to put them on the record or not. Perhaps  
14 they'll come on to the record when the defendants  
15 are deposed.

16 Q. What do you mean when you say disclose  
17 them to defendants?

18 A. We did a supplemental document  
19 production on Friday and there are some  
20 documentation in there that support my testimony.

21 Q. And you said something about the last  
22 part something about what other witnesses deposed.

23 What did you mean by that?

24 A. Perhaps other documents will be  
25 brought up. I have no idea what is going to come

1 J. Fischman

2 up in these depositions.

3 Q. But I am asking about any facts that  
4 you have not facts that other lawyers have that I  
5 ask you about or ask other people about.

6 I am asking you about other facts that  
7 you have that support your allegations of  
8 discrimination.

9 A. Those are the facts that I have.

10 Q. And you mentioned retaliation in the  
11 course of your answer.

12 I assume, but please correct me, that  
13 those answers include the facts that support any  
14 claim of retaliation as well as discrimination; is  
15 that right?

16 MR. BERMAN: Object to form.

17 A. Yes. The facts that we have are in  
18 evidence, produced or came out during the course  
19 of today's testimony or the first day of  
20 testimony.

21 Q. When did you first consider filing a  
22 lawsuit against MCHA or any of its affiliates?

23 A. As Pat was watching me pack my purse  
24 on January 30, 2017.

25 Q. The day of your termination?

1 J. Fischman

2 A. Oh, yeah.

3 Q. Why not sooner?

4 A. Because I was the primary bread winner  
5 for my family and I needed the job and the income.

6 Q. Do you think good judgment is an  
7 important qualification to serve as general  
8 counsel of a major corporation?

9 A. I do.

10 Q. If you were hiring somebody in that  
11 role and you were faced with two candidates, one  
12 that you thought had good judgment and the other  
13 one didn't, which one would you hire, other things  
14 being equal?

15 A. It would depend on what my basis of  
16 that conclusion was.

17 Q. I don't understand.

18 Other things be equal, the only  
19 difference is one candidate has good judgment and  
20 the other one doesn't, which one would you hire?

21 A. I want to hire the one who has good  
22 judgment.

23 Q. What if one candidate had good  
24 judgment and the other didn't but the one who  
25 didn't went to a better law school, which one

1 J. Fischman

2 would you hire?

3 A. Maybe I would question what my basis  
4 of my decision is.

5 Q. What do you mean?

6 A. Maybe I would question what is my  
7 basis for one having good judgment and one having  
8 not good judgment.

9 Q. I am taking it as a given that you  
10 know these candidates and one of them you  
11 concluded has good judgment and the other you  
12 concluded does not and you said quite sensibly  
13 that of course you would hire, you didn't say of  
14 course, but you said you would hire the candidate  
15 that has good judgment.

16 And I am asking you would that still  
17 be true even though the candidate that didn't have  
18 good judgment went to a better law school?

19 A. It is entirely possible that I would  
20 hire the person with good judgment over the person  
21 who went to a better law school but I would also  
22 question. It is not such a simple answer. It is  
23 not such a simple yes or no question. There is  
24 more involved. Judgment is -- there is many  
25 factors not just good judgment, bad judgment and

1 J. Fischman

2 what is my basis for my good judgment, bad  
3 judgment.

4 Q. You told me without qualification that  
5 you would, other things being equal, choose the  
6 candidate with good judgment over the candidate  
7 with not so good judgment. You were not able to  
8 give me a clear answer that you would do the same  
9 if the other candidate went to a better law  
10 school.

11 Did I understand that right?

12 A. No. I guess you hire the person with  
13 good judgment.

14 Q. What if the candidate with good  
15 judgment, what if there were two candidates, one  
16 had good judgment and the other one didn't have  
17 good judgment but had a couple years more  
18 experience plus went to a better law school, which  
19 one would you hire?

20 A. These hypotheticals are so interesting  
21 because you are trying to lead me down a path of  
22 saying oh, law school, experience. None of that  
23 matters because you are always going to hire the  
24 person with good judgment and I can't answer these  
25 hypotheticals in the way that you are posing them

1 J. Fischman

2 because they are being posed in a vacuum. Ask me  
3 about what my experience is but I am sorry, I  
4 can't answer those questions. They are too --  
5 they are too -- they are in a vacuum.

6 Q. You have asserted certain claims  
7 against my client.

8 A. Yes.

9 Q. And those claims include certain  
10 theories of liability and responsibility as  
11 complaints do. You are a lawyer and you  
12 understand that. In a deposition I naturally on  
13 behalf of my client want to understand what your  
14 position is. Sure, part of it we try to  
15 understand the facts, but we are also trying to  
16 understand what your position is. What your  
17 theory is. What your view of the world is to see  
18 if it supports the allegations you are making. So  
19 that's why I am asking. I am not trying to trap  
20 you. These are not really hypotheticals although  
21 we can debate what the word means. I am trying to  
22 understand what your position is and that's why I  
23 am asking the question.

24 A. I think my position is is that if I am  
25 a Japanese executive sitting in MCHC with all my

1 J. Fischman

2 other male Japanese executives, it does seem like  
3 the woman doesn't have as good judgment as the guy  
4 that we like to have a beer with and go to a  
5 baseball game with and it does seem like the women  
6 as stated in Sakaguchi's e-mail are just too  
7 emotional. Calm down women as we have seen with  
8 the Japanese olympic committee head doesn't like  
9 to have women on the olympic committee because  
10 they talk too much in meetings.

11 You got to understand the context in  
12 which we are all sitting here is that you can't  
13 objectively say one person has good judgment and  
14 one person has bad judgment because it depends on  
15 who is asking the question; right. And so I had  
16 good judgment in every one of my years of working  
17 at Mitsubishi. Every single one of them. I had  
18 performance review after performance review. I  
19 was -- why was I responsible for 23 companies  
20 because I had good judgment. Because I gave good  
21 advice. Because I was able to manage multiple  
22 different kinds of matters from antitrust to  
23 environmental, to IP, to contracts, to litigation,  
24 to multi-million dollar contracts all juggling  
25 that at the same time with my good judgment.

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2 So now you are saying in a  
3 hypothetical that should we hire someone who  
4 doesn't have good judgment who has more  
5 experience. How did that person get all of that  
6 experience without their good judgment? I say to  
7 you that person who had all that great experience,  
8 business knowledge, time invested probably had  
9 pretty good judgment and maybe was picked apart  
10 because of her gender because she didn't fit into  
11 the mold of the executives that they had seen  
12 before. So that's the basis for my claim.

13 Q. I understand your position. I want to  
14 go back and ask about retaliation a little  
15 further.

16 What is the basis for saying you were  
17 retaliated against as opposed to the events that  
18 happened taking place for sort of good and  
19 legitimate reason on their own?

20 MR. BERMAN: Object to form.

21 A. Specifically, for one example the  
22 whole Amber Todd claim of early March 2016 where I  
23 had discussed that I felt that the company MCHC  
24 was discriminating begins Ms. Todd on the basis of  
25 her gender because they had treated her husband

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2 completely differently than they had treated her  
3 and when I raised this to my boss and supervisor  
4 he got very angry with me, very angry and that I  
5 felt at that moment I am going to be retaliated  
6 against this because I spoke up, okay. Within the  
7 month I suddenly have a negative needs improvement  
8 on my communication on my performance review which  
9 if you know the fiscal year ends March 30th, March  
10 31st. So specifically with that I felt I was  
11 going to be retaliated against and then for the  
12 whole Anne Riley situation again, I questioned the  
13 way it was being handled. It was a sexual  
14 harassment claim. I questioned the way it was  
15 being handled and I felt that I was going to be  
16 retaliated against for questioning how this man  
17 was going to handle this claim against another man  
18 and sure enough just a few months later not even,  
19 a few weeks later. No, it was a few months  
20 because you corrected that it was the end of  
21 August or something. I thought it was October.

22 Q. I want to ask now about the equal pay  
23 claim you have made.

24 What's the basis for saying that,  
25 what's the basis for the equal pay violation?

1 J. Fischman

2 A. I heard he was making more than me.

3 Q. If it turns out he was not making more  
4 than you, than you would not have a claim;  
5 correct?

6 MR. BERMAN: Object to form.

7 A. I think that he was treated in a way  
8 that -- I can't make a legal conclusion about that  
9 at this time. We have asked for the documentation  
10 from defense on his salary, his benefits and all  
11 of the information on his personal file and we  
12 received none of that, to my knowledge. When you  
13 produce that I guess that's when the companies or  
14 the parties will get together and have a  
15 discussion about that.

16 Q. But sitting here today, you don't have  
17 any facts to support that claim, do you?

18 MR. BERMAN: Object to form.

19 A. I just said that I have heard that he  
20 was making more than me and I know also that he  
21 had the car and that they had the parking and that  
22 he had other perks and benefits.

23 Q. Is there any other basis for your  
24 equal pay claim -- in other words -- withdrawn.

25 Other than the comparison between you

1 J. Fischman

2 and Mr. Oliva, is there any other basis for your  
3 equal pay claim?

4 A. I can't say for sure.

5 Q. You are not saying, for example, that  
6 you made less than other assistant general  
7 counsels, are you?

8 A. Than other assistant general counsels  
9 no, I am not saying that.

10 MR. FORTINSKY: Could we take a five  
11 minute break.

12 THE VIDEOGRAPHER: We are now going  
13 off the record. The time is 3:29.

14 (Recess taken.)

15 THE VIDEOGRAPHER: We are back on the  
16 record at 3:47.

17 BY MR. FORTINSKY:

18 Q. I want to clarify something we talked  
19 about before the break Ms. Fischman. We were  
20 talking about your retaliation claim and I want to  
21 make sure that I have distinct from the  
22 discrimination discussion we had, a clear account  
23 of what adverse job actions you allege were taken  
24 by any of the defendants that constitute  
25 retaliation.

1 J. Fischman

2 Could you tell me that?

3 A. Yes, and let me clarify that I believe  
4 also that there are other facts and other  
5 explanations of incidents that occurred that I was  
6 asked about by Ms. Colwin that I didn't fully  
7 explain. So maybe not every single detail has  
8 been enumerated during the course of this  
9 testimony, but it is actually in the complaint and  
10 in documentation that we provided. So going back  
11 to --

12 Q. And I am sorry, just pausing on that.  
13 You are referring to the allegations  
14 of discrimination when you said that just now?

15 A. Yes, allegations of discrimination,  
16 yes.

17 Q. Just in the interest of clarity, are  
18 there facts that support the discrimination that  
19 we did not cover and that you think you did not  
20 get the chance to cover that would also constitute  
21 acts of discrimination?

22 A. Yes. I mean I believe that there were  
23 other incidents. For example, my demotion which  
24 was based on pretextual and completely fabricated  
25 mid-year review in 2015 and I believe that there

1 J. Fischman

2 were other incidents that we have discussed at  
3 some different points during the course of today  
4 and our first meeting where I tried to explain the  
5 situation and may have been cut off in my  
6 explanation.

7 Q. But are there facts that you felt you  
8 didn't get to put on the record because you got  
9 cut off that we have not already covered that you  
10 think constitute evidence of discrimination?

11 A. There very well may be but I can't be  
12 responsible to remember ever single thing that was  
13 or was not said in the last ten hours of my  
14 testimony.

15 Q. I am not asking you to recall what you  
16 intended to say at some particular time. I am  
17 just asking whether there are things that are not  
18 on the record of the deposition last time or this  
19 time, that are evidence in your mind of  
20 discrimination that you haven't put on the record  
21 yet?

22 A. We haven't -- there are a few things  
23 that we haven't discussed that were in the  
24 complaint.

25 Q. Like what constitutes acts of

1 J. Fischman

2 discrimination? I realize there are other things  
3 in the complaint. Not every paragraph constitutes  
4 an allegation that there was discrimination, but  
5 what other acts of discrimination did you believe  
6 you have not yet put on the record?

7 A. I would have to go through the  
8 complaint and make sure that we touched upon every  
9 allegation of discrimination that I made in the  
10 complaint and see if one of you have asked me  
11 about it yet.

12 Q. Please go ahead.

13 A. Do you want to go off the record while  
14 I review the complaint?

15 Q. That's fine.

16 Before we go off the record I began to  
17 ask you too whether there were adverse employment  
18 actions that constitute evidence of retaliation.  
19 Remember I said when we started I wanted to get a  
20 clear statement of what those were. So if you are  
21 reviewing the complaint you can have that in mind  
22 too because that's the next question I am going to  
23 ask you.

24 THE VIDEOGRAPHER: Going off the  
25 record. The time is 3:54.

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2 (Recess taken.)

3 THE VIDEOGRAPHER: We are back on the  
4 record at 4:clock.

5 BY MR. FORTINSKY:

6 Q. We have just taken a few minute pause  
7 to allow you Ms. Fischman to look at the complaint  
8 to identify additional facts in response to the  
9 question I put on the record.

10 So let me ask you again with the  
11 benefit of that, what additional facts that we  
12 haven't discussed in the course of your testimony  
13 today and the first deposition do you believe  
14 support your claims of discrimination?

15 A. Well, I think the easiest way for me  
16 to go through that would be to go through the  
17 paragraphs of the complaint where I enumerate the  
18 claims of discrimination. So I can read the  
19 complaint into the record if you would like or I  
20 can just give you the paragraphs that I believe  
21 are relevant.

22 Q. I don't think it is necessary to read  
23 it into the record. You can make reference to  
24 paragraphs, that's fine.

25 A. On paragraph 51 of the first amended

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complaint.

Q. This is the document we marked earlier as Exhibit 17?

A. 17.

Q. Okay.

A. On paragraph -- and the subsequent paragraphs 52 through 54 are my facts about discrimination.

Evidence of the facts of discrimination in 56.

Evidence of discrimination in 58.

Evidence of discrimination in 59, 60, 61, 62, 63, 64, 66.

Evidence of retaliation 68, 69, 70.

Q. This is retaliation you are referring to 69 and 70?

A. Evidence of discrimination.

Q. I'm sorry. It has to be verbal.

So your answer is yes?

A. Did you ask a question?

Q. My question is referring to 69 and 70 you are enumerating additional examples of retaliation?

A. Yes. 71 is evidence of

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discrimination.

72 evidence of discrimination.

Evidence of retaliation 76, 77.

78 is evidence of discrimination.

Evidence of discrimination in 79.

Evidence of retaliation in 80.

And evidence of discrimination and a  
pretextual basis of discrimination in 83.

Evidence of retaliation 84, 85 and 86.

Q. Also retaliation?

A. Yeah.

88 retaliation.

89, 90, 91, 92 retaliation.

I am sorry. Let me correct that.

92 is evidence of discrimination.

94 discrimination.

Q. Anything else?

A. Well, and any of the facts that are  
related to any of those paragraphs that we've  
discussed or may discuss or could discuss.

Q. What is it that we may discuss or  
could discuss that we haven't already discussed  
that would relate to those paragraphs?

A. Neither you nor Ms. Colwin have asked

1 J. Fischman

2 me detailed information about many of those  
3 claims. So they are taken as facts right here.

4 Q. We will get to some of those.  
5 Switching topics.

6 A. That wasn't really meant to be an  
7 invitation for more questions frankly. It has  
8 been a long day already.

9 Q. Switching topics.  
10 Do you know what the Qualicaps Group  
11 is?

12 A. Yes.

13 Q. What is it?

14 A. It is a group of companies that makes  
15 pharmaceutical capsules.

16 Q. And Technophar?

17 A. A Canadian company that was part of  
18 that group.

19 Q. What is its relationship to the MCHA  
20 legal department?

21 A. Provide legal services.

22 Q. Are they affiliates of MCHA?

23 A. I suppose so, yeah.

24 Q. Do you recognize the names Victor and  
25 Corrina Calin, C-A-L-I-N?

1 J. Fischman

2 A. Yeah.

3 Q. Who are they?

4 A. My recollection is that they are the  
5 president or owner. Victor was I think the  
6 president of Qualicaps.

7 No. I mean Technophar.

8 Q. And Corinna Calin?

9 A. I can't recall what her role was.

10 Q. Do you know who Ciro Ahumada is?

11 A. Yes.

12 Q. Who is he?

13 A. He was an executive at the Spanish  
14 affiliate of Qualicaps.

15 Q. He was the CEO if I am not mistaken;  
16 is that right?

17 A. If you have him as the CEO, then he  
18 was the CEO.

19 Q. Was he -- did you provide legal advice  
20 in connection with the severance negotiations of  
21 Victor and Corinna Calin?

22 A. I probably did.

23 Q. And who was your client contact with  
24 respect to those discussions?

25 A. Why don't you tell me who the client

1 J. Fischman

2 contact was?

3 Q. Was it Mr. Ahumada?

4 A. Perhaps it was.

5 Q. Is that your recollection? Is that  
6 your best recollection?

7 A. Yes.

8 Q. Did you work with outside counsel on  
9 those negotiations?

10 A. Yes.

11 Q. What firm was that?

12 A. Would have been a Canadian lawyer, law  
13 firm.

14 Q. At one point did you provide a  
15 proposal concerning the severance package for  
16 outside counsel to give to Mr. Calin's counsel?

17 A. I may have.

18 Q. Do you remember that?

19 A. I remember working on Victor's  
20 termination because Victor was very, was a very  
21 hostile and difficult manager and there were many  
22 complaints about his hostility towards employees  
23 and his inappropriate behavior and conduct and I  
24 believe we worked with Canadian counsel on how to  
25 sever the relationship. He also had been I think

1 J. Fischman

2 the founder of Technophar. So they had been  
3 purchased by Qualicaps at some point in time and I  
4 worked with Canadian counsel to make sure that we  
5 did not run afoul of Canadian law with respect to  
6 terminations and severance and obligations under  
7 Canadian law which would be very different than  
8 under US law.

9 Q. What do you remember about the  
10 severance negotiations?

11 A. I believe my memory could be best  
12 refreshed with some documentation about the  
13 severance negotiation.

14 Q. But sitting here right now based on  
15 what is in your head, what do you remember?

16 A. I remember he got a severance package.

17 Q. Do you remember that you gave a  
18 proposal, a severance proposal to outside counsel  
19 to transmit that was, consisted of a lump sum plus  
20 a continuance of salary?

21 A. Possibly.

22 Q. That's what happened; right?

23 A. I can't recall.

24 MR. BERMAN: Object to form.

25 Q. That severance proposal, was that

1 J. Fischman

2 authorized by anybody?

3 A. I am certain it would have been since  
4 I would have not had authority to offer that  
5 severance package.

6 Q. Who would you have gotten authority  
7 from?

8 A. I would have gotten authority from  
9 whoever was in charge of paying that.

10 Q. You would have gotten authority from  
11 essentially your client contact at the client;  
12 right?

13 A. Yes and/or at the time Donna was  
14 working very closely with Qualicaps and Ciro was  
15 very, very was working on that and perhaps I spoke  
16 with her. I don't recall. I would have to go  
17 through all the documentation and the e-mails  
18 between me and everybody else involved in that.

19 Q. Do you remember Mr. Ahumada ever  
20 authorizing you to make the severance proposal  
21 that I just described?

22 A. I have no recollection that he did not  
23 authorize me for that severance package.

24 Q. You have no recollection one way or  
25 the other?

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2 A. That's right.

3 Q. And if he were to testify that he  
4 authorized you to provide a severance proposal  
5 with either two lump sums or a continuance of  
6 salary, would you have a basis to say that was not  
7 so?

8 A. I don't have a basis because I don't  
9 have the documentation in front of me to refresh  
10 my recollection.

11 Q. So sitting here right now you have no  
12 recollection one way or the other?

13 A. No.

14 Q. Do you believe you have been injured  
15 at all by the defendant's conduct alleged in the  
16 complaint?

17 MR. BERMAN: Object to form.

18 A. Yes.

19 Q. How so?

20 A. I have lost my 20 years career in law.  
21 I was unable after a year of searching for a job  
22 to get another comparable position.

23 I was damaged emotionally.

24 Q. Anything else?

25 A. I was damaged emotionally and

1 J. Fischman

2 mentally, physically. I was destroyed by their  
3 conduct.

4 Q. What's the difference between damaged  
5 emotionally and damaged mentally?

6 A. I don't know.

7 Q. The same idea; right?

8 A. The same idea. Just being over  
9 inclusive because it was very painful and it  
10 continues to be extremely painful.

11 Q. Putting aside for the moment the  
12 emotional and mental that you just referred to,  
13 you said you were damaged physically.

14 How were you damaged physically?

15 A. Physically I lost interest in the  
16 enjoyment of life and was like couldn't get out of  
17 bed every day. Had to fight to get out of bed.  
18 Physically had stopped eating. Physically just  
19 really hurt. So it is wrapped into the emotional  
20 and mental distress.

21 Q. For my purposes today I will divide  
22 between the economic side and then group together  
23 the emotional, mental, physical all --

24 A. Sure.

25 Oh, I did have one physical ailment

1 J. Fischman

2 that lasted for about four years.

3 Q. What was that?

4 A. The stress of all of this brought on  
5 this really weird like itching that started right  
6 around this time of 2015 I think and it lasted for  
7 about four and a half years and it was like this  
8 horrible itching from the stress. That was a  
9 physical.

10 Q. And that's gone now?

11 A. Yes. Through a lot of stress  
12 reduction and different doctors and medicines,  
13 yeah.

14 Q. I am glad it's gone. You have --  
15 sorry. Let's focus on the damages that you say  
16 you've experienced because you were unable to get  
17 a job.

18 Can you explain and quantify what  
19 those damages or injuries were?

20 A. I think it is not, it wasn't just the  
21 first injury of being terminated. It was also the  
22 injury of being terminated in such a, like an  
23 incredibly nasty, vicious manner after I had  
24 devoted so many years of good work to a company  
25 and to people that I believed were colleagues and

1 J. Fischman

2 friends and it was very vicious which made it even  
3 harder, but not only did they terminate me and not  
4 provide any severance or notice. As I mentioned,  
5 I was the primary bread winner in my family and  
6 had been.

7 They denied my unemployment insurance  
8 forcing me to hire counsel to fight that. That  
9 was 20 grand to get 11. Doesn't sound like a  
10 great idea and in fact, most lawyers wouldn't take  
11 it for free as is really the law in New York. So  
12 my employment counsel previous to these agreed to  
13 help me with that.

14 I'd worked for nine years at a company  
15 or eight years, whatever it was, since 2008 at a  
16 company with increasing levels of responsibility  
17 and yet when I was fired I had no one that I could  
18 ask for a letter of reference from because I knew  
19 that the company was because they had fired me for  
20 cause pretextually that I knew from my prior  
21 experience as a lawyer in the company that anybody  
22 I had asked would ask permission from Nick or from  
23 Donna for whether or not it would be okay if they  
24 gave a reference.

25 So let me give an example of that, if

1 J. Fischman

2 you don't mind. Mike Grapmans (phonetic), that I  
3 had worked with him since my, for my entire time  
4 that I had been at the company I worked with him.  
5 When his company was very small, only a handful of  
6 people to many years of supporting his business as  
7 it grew and I supported him through two  
8 acquisitions and I did almost all of his legal  
9 work. I had a very good relationship with him but  
10 I knew from another experience when somebody else  
11 was terminated in the company Larry Smith, at  
12 another affiliate company that Mike was friendly  
13 with, that Mike had asked Donna if it would be all  
14 right for Mike to give Larry a letter of reference  
15 and my recollection at that time, because I was  
16 involved in the discussions, was that it was not a  
17 good idea. You can confirm that you knew him.  
18 You can confirm that you worked with him. You can  
19 confirm that he worked here a certain amount of  
20 dates, but it would be better if you didn't give  
21 him an open-ended letter or act as a reference for  
22 him which I recall Larry complaining to me that  
23 that was very hard on him. He had left and had a  
24 severance package and was given outsourcing  
25 support when he was terminated.

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2 So I knew that there was no one I  
3 could go to at the company after this very vicious  
4 termination and in fact, within a few months that  
5 was confirmed when my unemployment insurance was  
6 denied that I knew that there was no one I could  
7 have spoken to at that company nor -- because they  
8 were gearing up for litigation and as we know they  
9 expected this, right. We know that on February 1,  
10 2017 Donna wrote to Ken Fujiwara Jennifer is going  
11 to hire counsel. We are ready. We know. The  
12 company knew. Not a surprise. Not that I wanted  
13 to. That's why I asked for a package when I left.  
14 Been there long time.

15 So it is very hard to go and ask for a  
16 job. It is hard to interview for a job without  
17 anybody being able to speak to anyone at your  
18 prior employment where you worked for the last  
19 nine years. I had the general counsel of space  
20 and airborne systems from Raytheon as a reference.  
21 I had several of my outside counsel that had  
22 worked with me over the years at Mitsubishi who  
23 acted as references, but no one from the company.  
24 And it came up again and again in all of my  
25 interviews. Who can we call at Mitsubishi? No

1 J. Fischman

2 one. No one. So it became very difficult  
3 although I tried.

4 On top of that the company knew that I  
5 was registered inhouse counsel. That I wasn't a  
6 member of the New York Bar and that in order to  
7 continue to practice law in the State of New York  
8 I had to be registered as inhouse counsel in a  
9 corporation. So while for other attorneys maybe  
10 they can do low level contract work for Axiom  
11 (phonetic) or one of the other contractors that  
12 wasn't an option for me. I needed to be hired by  
13 another company. So I tried. I looked and I  
14 looked and I looked and I applied to no avail for  
15 a year and a half.

16 In the meantime, my children need to  
17 be fed. Our house mortgage needs to be paid. Our  
18 insurance, I had no health insurance. It was cut  
19 off on my last day of employment. So we took a  
20 different health insurance from my husband's  
21 company. So I don't claim that as an issue, but  
22 it was certainly scary.

23 I didn't get a single offer of  
24 employment. After about three, four months I  
25 didn't get a single request for an interview. I

1 J. Fischman

2 watched my 18 year, 20-year career that I had  
3 struggled for, that I had worked for, that I went  
4 to law school at 25. I moved across the country.  
5 I worked as a law clerk to a federal judge who is  
6 now on the 9th Circuit. I worked at Fried Frank,  
7 a national law firm. Tough place. I worked at  
8 Paul Hastings, a national law firm. Another tough  
9 place. Great lawyers, great training, hard hours.  
10 You know how you work your associates at Shearman  
11 and Sterling. You know how it is to be a first  
12 and second year and third year and fourth year  
13 associate there? How many hours do they bill?  
14 Three thousand? It's not a question.

15 Q. I took that as --

16 A. But you know how it is. You work and  
17 you work and you work and I had worked and they  
18 know how hard I worked and in an instant they took  
19 it all away. There was no harm for anybody. In  
20 an instant they took it all away and I looked and  
21 I looked and nobody was interested. And I am 50  
22 years old and a I'm a woman who is 20 years out of  
23 law school looking for an inhouse position and  
24 everyone I interviewed was younger than me and  
25 everyone I interviewed had less experience than I

1 J. Fischman

2 did and they didn't want me. So in an instant --  
3 maybe with a glowing review, maybe with a glowing  
4 reference, maybe with -- maybe had I had a job and  
5 they said to me Jennifer, things are not really  
6 working out here. We want to take the department  
7 in a different direction like they had said to  
8 Nathan Gallup in 2011 when Donna terminated him.  
9 I am going to give you six months notice. Find  
10 another job with our support. They didn't give  
11 that to me.

12 What did they give Andy Sezar when he  
13 was terminated. We have asked for that  
14 information. Did Andy get notice? Did he get a  
15 severance agreement? Does he have a reference  
16 from the company? We have asked for that  
17 information and they haven't provided us.

18 Q. I have some questions for you about  
19 what you just said. You started out by saying  
20 that the termination was vicious.

21 Why do you say that?

22 A. Because it was pretextual. It was  
23 made up of, it was made of a small truth, right  
24 that I had made a mistake and not sent a  
25 communication to a department, a law department in

1 J. Fischman

2 Japan but it wasn't the full truth. The full  
3 truth was that I made an authorized offer of  
4 settlement authorized by the client of MCC. That  
5 was the full truth, but they took a  
6 miscommunication and grew it into an enormous  
7 issue that it wasn't so that they could terminate  
8 me. It was vicious. I worked there for nine  
9 years. We had just come back from a five day  
10 business trip in California where we sat across  
11 the table from each other every night, every  
12 breakfast, every lunch and he knew he was going to  
13 fire me when we returned. Making pleasantries.  
14 Asking me about my family. It was a lie. It was  
15 vicious.

16 Q. Did you ever ask anybody for a letter  
17 of reference? Withdrawn.

18 Did you ever ask anybody at MCHA or  
19 any of its affiliates for a reference?

20 A. I did not because I knew based on my  
21 experience it would not be done well. It would  
22 not be done.

23 Q. That was pure speculation on your  
24 part; right?

25 MR. BERMAN: Object to form.

1 J. Fischman

2 Q. Correct?

3 A. Based on my experience at Mitsubishi  
4 that was how it was handled.

5 Q. But you never asked; right?

6 A. Who was I going to ask, Nick. Was I  
7 going to ask Donna? She demoted me based on a  
8 completely pretextual and made up fabricated  
9 thing. I should ask these two?

10 Q. You said you worked for about 20  
11 difference clients within, among MCHA chain and  
12 affiliates; correct?

13 A. Yes, and I did not believe that they  
14 would have -- I believe they would have known that  
15 I was terminated and there was no way they were  
16 going to give me a reference.

17 Q. Was there any negative consequence in  
18 asking?

19 A. There was great humiliation in what I  
20 had been going through and I believe that nobody  
21 was going to give me a reference. Believe me I  
22 worked so hard, but I knew how the internal  
23 spinning goes and there was no way they were going  
24 to let anybody give me a letter of reference and  
25 really it is not a letter of reference. You need

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2 someone who can be called as a recommendation.

3 Who can talk in depth about my work and that was  
4 these two.

5 Q. And you had someone from Raytheon who  
6 was willing to do that for you?

7 A. Yes.

8 Q. How many people from Raytheon?

9 A. Two.

10 Q. Who were they?

11 A. Barbara Pollack, who was my, who was  
12 the vice-president and general counsel of Space  
13 and Airborne Systems and I had Bruce Greenspan who  
14 was a director of contracts. I had -- probably  
15 could have asked Irv Grough (phonetic) who I still  
16 keep in touch with who is the vice-president of  
17 air combat and probably could have asked -- and  
18 this was all -- yeah. I had them on my list of  
19 references, but they hadn't worked with me in nine  
20 years.

21 Q. Do you know whether they gave you --  
22 do you know whether anybody ever called them?

23 A. I don't know if anybody ever called  
24 them.

25 Q. Did you provide their names to --

1 J. Fischman

2 A. Yes.

3 Q. -- to the places you applied?

4 A. Yes, I did.

5 Q. Do you know whether they actually  
6 would have given you good references?

7 A. Yes, I do.

8 Q. How do you know?

9 A. Because I was still in contact with  
10 them. I still had friendships with them.

11 Q. How many companies did you apply to?

12 A. I think over a hundred.

13 Q. How did you go about looking for a  
14 job?

15 A. I looked when I first was terminated I  
16 met with several recruiters. People I had known  
17 in the industry. People that were friends,  
18 family. People that had placed me in this job. I  
19 had spoken with many of them. I reached out to  
20 Bliss who is a legal seconder. I spoke with  
21 people at Axiom and I did online research for  
22 companies for which I had an appropriate  
23 background for having come from manufacturing and  
24 industrial corporations.

25 Q. What is Axiom?

1 J. Fischman

2 A. They are a temporary lawyer provider,  
3 contract lawyer. After multiple conversations  
4 with Axiom and Bliss it became clear that I could  
5 not take a temporary position from them because I  
6 needed to be hired by a corporation in order to  
7 practice law in the State of New York.

8 Q. Did you ever take the New York Bar?

9 A. I did not.

10 Q. Why not?

11 A. I had taken the California Bar in 1996  
12 and it took three months of extraordinary time,  
13 energy and effort and emotional strength to sit  
14 for the bar exam and I did not feel that at this  
15 time in my life that I had the emotional strength  
16 to sit for that bar exam that many people do fail  
17 and John F. Kennedy failed it three times. It was  
18 intimidating at that time in my life and I didn't  
19 feel that was necessary.

20 Q. Where were you looking to be hired?

21 A. I looked in kind of -- I am sorry. It  
22 is very distracting when everybody is asking  
23 questions.

24 MS. COLWIN: I am sorry.

25 A. That's okay.

1 J. Fischman

2 I looked all up and down the eastern  
3 seaboard. I wanted to stay in the New York  
4 Metropolitan area of course because my children  
5 are in school here. My family is here. I have  
6 elderly parents who are here. I looked New York.  
7 I looked in places where I could probably waive in  
8 like Florida, Maryland, D.C. I looked at  
9 government contractors in D.C. Maryland, New  
10 Jersey and New York, Connecticut.

11 Q. Can you waive that in New York?

12 A. No. They don't have reciprocity with  
13 California.

14 Q. Were there other companies besides  
15 Axiom and Bliss where you couldn't go further in  
16 the process because you were not a member of the  
17 bar?

18 A. No.

19 Q. It was just those two?

20 A. Because of their business model they  
21 are a contract employer. They loan out attorneys  
22 to do contract work like document review and et  
23 cetera. So those weren't full time positions.  
24 Those were sort of continue with some income.

25 Q. So you are a member of the bar in

J. Fischman

California?

A. Yes.

Q. You are not a member of the bar in New York?

A. Yes, we have established that.

Q. And your claim is that you -- withdrawn.

You said taking the bar was an emotional investment of time and emotional resources. I am paraphrasing.

But you took the bar in California and I take it you thought it was worth it to do that; right?

A. I had taken the bar in California 20 years earlier when I had just graduated law school and didn't have the responsibilities of raising a family or taking care of a family and yes, it was to practice law in California. I took the California Bar.

Q. Was it worth it?

A. Yes.

Q. Why not do the same in New York?

A. Because the jobs that I wanted in New York would have been to work in a corporation as

J. Fischman

inhouse counsel which I had been doing for the last 15 years and I did not need the New York Bar to do that. I needed the New York Bar only to do the temp work that would have kind of supplemented my income until I got a full time position.

Q. You said you had to leave the practice of law because of the separation with MCHA; right?

A. Yes.

Q. So if you had taken the bar in New York that would have opened up a whole range of additional opportunities to practice in New York; correct?

MR. BERMAN: Object to form.

A. Like what?

Q. As you know I am asking the questions.

A. You are doing as good a job as anybody in testifying.

So tell me do you think there were other opportunities that I missed. I think that I applied to the opportunities for which I was qualified for.

Q. My question is: Do you agree or disagree that taking the New York Bar would have opened up a range of opportunities for a lawyer

1 J. Fischman

2 that would otherwise not be available?

3 MR. BERMAN: Object to form.

4 A. I disagree because I don't believe  
5 that taking the New York Bar would have opened any  
6 additional opportunities for me for which I wasn't  
7 already qualified for.

8 MO MR. FORTINSKY: Move to strike as not  
9 responsive.

10 Q. I am not asking about you personally.  
11 I am asking about the general principle.

12 Do you agree that applying for the New  
13 York -- sorry.

14 Would you agree that being a member of  
15 the New York Bar opens up a range of possible job  
16 opportunities that are otherwise unavailable to a  
17 lawyer?

18 MR. BERMAN: Object to form.

19 A. What kind of lawyer?

20 Q. A lawyer generally.

21 A. I think it depends on what kind of  
22 lawyer you are talking about and what kind of  
23 practice that person is interested in doing.

24 Q. Can you practice law in New York State  
25 without being admitted to the bar in New York?

1 J. Fischman

2 A. No. Except if you are a registered  
3 inhouse counsel at a corporation, then you can  
4 practice law in the State of New York without  
5 being a member of the New York Bar.

6 Q. And you were registered?

7 A. Yes.

8 Q. Who did you register with?

9 A. The State Bar of New York.

10 Q. And when did you first register?

11 A. When I first moved to New York in  
12 2008.

13 Q. Has your registration lapsed since  
14 then?

15 A. You are required by law to send a  
16 notice of termination within a certain time period  
17 of your termination from the corporation from  
18 which you were registered. So yes. It is not  
19 lapsed. I had to terminate it.

20 Q. When did that happen? When did you  
21 terminate it?

22 A. Sometime after my termination from  
23 Mitsubishi.

24 Q. You said you applied for more than a  
25 hundred jobs I think you said; right.

1 J. Fischman

2 How many of them did you have  
3 interviews with?

4 A. Very few.

5 Q. Approximately?

6 A. A dozen.

7 Q. What companies?

8 A. I would have to look at the list to  
9 recall. I was supposed to have an interview at  
10 Amex.

11 I had an interview with CBRE. I had  
12 multiple interviews there. Maybe had a couple of  
13 other phone interviews, but I really didn't get  
14 very many interviews.

15 Q. How far did you get in the process?

16 A. I may have had an interview at  
17 MasterCard.

18 Q. And then did you advance in the  
19 process beyond that, beyond the first interview  
20 stage?

21 A. I would have to go back and see the  
22 list of companies to recall.

23 Q. Were there any companies where you got  
24 into a negotiation about salary?

25 A. No.

1 J. Fischman

2 Q. Were there any companies where they  
3 said they wanted to call your references?

4 A. Yes.

5 Q. Which ones?

6 A. Certainly when I was speaking with  
7 Bliss the recruiter and RPN, the recruiters and  
8 Elise Abraham, another recruiter. All of them  
9 asked for my list of references because they  
10 wanted to proposition me I suppose.

11 Q. Of the dozen companies that you  
12 interviewed with, did any of them ask for your  
13 references?

14 A. Possibly. I would have to look at the  
15 list. I am not even sure I got interviews with a  
16 dozen.

17 Q. But do you remember any instance in  
18 which you were asked to provide an employer after  
19 your interview with a list of references to call?

20 A. I believe that I was asked on a few  
21 occasions do you have references. Who can we call  
22 at Mitsubishi?

23 Q. Who asked you that?

24 A. I would have to look at the list again  
25 to see who they are.

1 J. Fischman

2 Q. Do you have that list?

3 A. We have produced the list of all the  
4 places I applied to.

5 Q. What about the places you interviewed,  
6 did you produce that?

7 A. I am not sure if we had a separate  
8 list. I don't think it was segregated.

9 RQ MR. FORTINSKY: We would call for the  
10 production of that list if it hasn't been --

11 A. I don't think we have a separate list.

12 Q. You mentioned just now that you would  
13 have to look at the list. That was the list --

14 A. No. The list I am referring to is the  
15 list of all the applications that might jog my  
16 memory as to where I had interviews.

17 Q. But --

18 A. Because there were so few.

19 Q. As you sit here today, you can't think  
20 of any instance, any specific name of a company  
21 that asked you for your references?

22 A. I think MasterCard.

23 Q. And did you provide the references?

24 A. I would have, yes.

25 Q. And did you hear anything further from

1 J. Fischman

2 MasterCard after that?

3 A. Yes. They were not hiring me.

4 Q. And I take it that for the others that  
5 you interviewed with the result was the same, they  
6 didn't hire you, they didn't make you an offer of  
7 employment?

8 A. Correct.

9 Q. When you went through those  
10 interviews, what did you say about your separation  
11 from MCHA?

12 A. I would say things to the effect of  
13 there was a new general counsel that came in after  
14 I was demoted and that he wanted to take the  
15 department in a different direction and that we  
16 just -- he just wanted to take it into a different  
17 direction so I just left.

18 Q. Did you think that was, that  
19 explanation was an impediment in any way to your  
20 getting a job?

21 A. Yes, I do.

22 Q. Why?

23 A. I am a very truthful person and I felt  
24 that that was the kind of thing that was a spin on  
25 what had happened and I think it is a pretty

1 J. Fischman

2 obvious spin and I typically I am an overtalker as  
3 you have noticed. I like to talk to people. I  
4 like to engage. I like to have fruitful  
5 conversations, by when you have a one liner on  
6 something it stands out as probably not the full  
7 story.

8 Q. Did anybody ask you followup questions  
9 about the story in those interviews?

10 A. Yes.

11 Q. What were the questions?

12 A. Tell me more about that. Why did you  
13 not get along with people or did you, what am I  
14 going to say. Of course I got along with  
15 everybody and I did except him.

16 Q. What else did you say in response to  
17 those questions?

18 A. I tried to keep it always very  
19 positive because I wanted to get a job badly.

20 Q. I now want to show you the amended  
21 initial disclosures that you provided in this  
22 litigation which I would ask the reporter to mark  
23 as Exhibit 25.

24 (Fischman Exhibit 25, the amended  
25 initial disclosures, marked for

1 J. Fischman

2 identification, as of this date.)

3 Q. Let me direct your attention to, this  
4 document doesn't have page numbers but the next to  
5 last substantive page has a section C Computation  
6 of Damages on it.

7 Do you see that?

8 A. Yes.

9 Q. Then you see it goes on to, it starts  
10 with the next page.

11 Do you see that?

12 A. Yes.

13 Q. Did you review this document before it  
14 was filed?

15 MR. BERMAN: Object to form. It  
16 wasn't filed.

17 Q. Did you review this form before it was  
18 signed?

19 A. Yes.

20 Q. Is there anything in here that -- what  
21 was your role in putting together the set of  
22 economic damages shown on this page?

23 A. Which page?

24 Q. The page that starts, it has on it C  
25 Computation of Damages and it says Economic

1 J. Fischman

2 Damages underneath it?

3 A. My contribution would have been  
4 providing all of my -- this is like attorney  
5 client; isn't it?

6 MR. BERMAN: Depends on your answer.  
7 You are cautioned not to reveal attorney  
8 client privileges. Otherwise, you can  
9 answer the question.

10 A. Can you restate the question please?

11 Q. What was your role in preparing the  
12 damages outlined under economic damages?

13 A. I don't think I can answer that  
14 without revealing attorney-client privileged  
15 communications.

16 Q. If you look at the four bullets that  
17 make up the economic damages calculations, do you  
18 believe all that to be true?

19 A. I believed it to be true as of the  
20 date of December 2019.

21 Q. Is there anything that is no longer  
22 true now?

23 A. Well, it's been a longer amount of  
24 time. So the numbers may be different if we start  
25 calculating them to today.

1 J. Fischman

2 Q. Does this document fairly state the  
3 damages you are claiming in this litigation?

4 MR. BERMAN: Object to form.

5 A. I think that section C of this  
6 document that you are referring to accurately  
7 states the types of damages that we are seeking in  
8 this lawsuit, if that's what your question is.

9 Q. Is there any part of it that is no  
10 longer correct?

11 A. As I said, it was all correct when it  
12 was filed on December 24th or was provided to  
13 defense counsel on December 24, 2019, but the time  
14 frame has shifted forward a year and a half, two  
15 years.

16 Q. But your claims have not changed in  
17 litigation; right?

18 A. That's right. So I would still being  
19 seeking back pay, front pay, benefits which would  
20 be offset by mitigation factors.

21 Q. What do you understand the word  
22 mitigation to mean?

23 A. Mitigation is my obligation to do what  
24 I can to lower defendants damages and my efforts  
25 in that respect have been great.

1 J. Fischman

2 Q. What have you done to mitigate  
3 damages?

4 A. I have started a new career after I  
5 was unsuccessful at finding work. Instead of  
6 staying home and being unemployed, I realized that  
7 there was an opportunity in the real estate  
8 business with a lot of connections that I had and  
9 crossover strengths from being a lawyer. As you  
10 know, if you are admitted to practice law in New  
11 York State you don't even have to take a real  
12 estate course to sell real estate in this state.  
13 So though I not having been a member of the bar, I  
14 did take a course, but found that I had a lot of  
15 overlapping skills in this area and connections  
16 and tried to make a go of it here.

17 Q. When did you first start looking for a  
18 job as a -- withdrawn.

19 When did you first start pursuing a  
20 career in real estate?

21 A. Towards -- I started working on it in  
22 the early, I would say, early summer of 2017.  
23 After being unemployed for about five or six  
24 months I got scared. I got really scared that I  
25 was never going to practice law again and that I

1 J. Fischman

2 was so terrified that I wasn't getting any  
3 response to any of my applications that I decided  
4 to take this real estate course to try and find  
5 another way of finding income in the interim.

6 Q. When did you send out the applications  
7 to be hired as a lawyer?

8 A. All throughout 2017 into early 2018.

9 Q. So the last time you did that was in  
10 what, first quarter of 2018?

11 A. Yeah. Probably the end of the first  
12 quarter. Maybe May 2018. So it had been 16, 17  
13 months.

14 Q. And that was the point where you would  
15 said you stopped looking for a job as an attorney  
16 and devoted yourself more fully to real estate?

17 A. It became apparent to me that I was  
18 unable to find a job in law after so many months  
19 and the further you get away from working we know  
20 statistically the harder it is to find a position.  
21 So I started hopefully to find a new career, yeah.

22 Q. So what was the point in time when you  
23 decided you were going to pursue a new career?

24 A. They were concurrent so.

25 Q. Still what was the point in time you

1 J. Fischman

2 decided to pursue a career in real estate?

3 A. So I decided to pursue a career or at  
4 least supplement the career in the meantime during  
5 the course of 2017 but I was still looking for a  
6 job in earnest in law throughout 2017 and probably  
7 throughout much of the first quarter, maybe the  
8 first half of 2018. That was a long time to go  
9 without any income.

10 Q. What was the month and year of your  
11 termination of your registration with the New York  
12 State Bar?

13 A. Sometime in 2017. I would have to  
14 find that record. I don't know.

15 Q. So do you have a job, you have a job  
16 in the real estate business; is that right?

17 A. I am an independent contractor. I  
18 don't have a job.

19 Q. Who do you work for as an independent  
20 contractor?

21 A. I am an independent contractor with  
22 Houlihan Lawrence.

23 Q. You are a real estate agent?

24 A. Yes.

25 Q. And is it common for real estate

1 J. Fischman

2 agents to work as independent contractors?

3 A. Yes. It is a hundred percent.

4 Q. The norm?

5 A. All. Not the norm. It is.

6 Q. When did you first begin to have that  
7 relationship with Houlihan Lawrence as an  
8 independent contractor?

9 A. Probably the summer of 2017, but I had  
10 no income in 2017 from that. I was just trying.

11 Q. And you went about learning the real  
12 estate business?

13 A. Yes.

14 Q. How did you do that?

15 A. My mother has sold real estate in -- I  
16 live in Scarsdale. She sold real estate in  
17 Scarsdale for 45 years. So I learned from her and  
18 others in my family.

19 Q. 45 years until when?

20 A. It hasn't stopped.

21 Q. She still does. I see.

22 Are you in some sort of partnership or  
23 other business relationship with your mother in  
24 connection with the sale of real estate?

25 A. Yes.

1 J. Fischman

2 Q. Can you tell us what that is?

3 A. I call her my partner.

4 Q. So what is the nature of the  
5 partnership?

6 A. I talk to her about -- she mentors me.

7 Q. Do you work jointly on particular  
8 house sales or prospective house sales?

9 A. She is 83 years old. She has a vast  
10 knowledge of probably every house in our area, but  
11 she doesn't engage in the day-to-day showing of  
12 houses. She accompanies me on listing  
13 presentations for sellers. She covers inspections  
14 and other things. Sometimes if I need her  
15 assistance, but by and large she is a mentor.

16 Q. And has that relationship been the  
17 same since you began doing this independent  
18 contractor work with Houlihan Lawrence in 2017?

19 A. Yes. My mother is a very well known  
20 professional in Westchester and I thought that if  
21 I partnered with her that I would have more  
22 credibility early on.

23 Q. Has that been true?

24 A. I believe so.

25 Q. What is your mother's name?

1 J. Fischman

2 A. Sheila stone.

3 Do you live in Scarsdale?

4 Q. Nearby.

5 A. Talk to me later.

6 Q. She is a pro?

7 A. Thank you.

8 Q. So you said you didn't earn any income  
9 from your real estate business or real estate  
10 practice in 2017; did I understand that right?

11 A. Correct.

12 Q. What was your income from the real  
13 estate business or real estate practice in 2018?

14 A. Let's just say that it was 170,000 at  
15 the time that we provided this statement at the  
16 end of December 2019.

17 Q. And by that you mean the accumulated  
18 income from 2018 and 2019?

19 A. Yes.

20 Q. And do you recall approximately what  
21 the split was between 2018 and 2019?

22 A. I don't recall.

23 Q. Are you compensated in any way other  
24 than getting a percentage on the sale of houses  
25 that you work on?

1 J. Fischman

2 A. No. I am not compensated by any other  
3 means and this is also offset by all of the  
4 expenses that I have to incur to make those sales.

5 Q. What expenses are those?

6 A. Including advertising and marketing  
7 and advertising on Zillow which is exceptionally  
8 expensive. I pay for the photography for all the  
9 houses that I list. I pay for my business cards.  
10 I pay for my gas. There is a lot of expenses as  
11 an independent contractor that is all on me.

12 Q. Is the \$170,000 that you included in  
13 this document net of those expenses?

14 A. I am going to say at the time that we  
15 wrote this that was a gross number because in  
16 recent conversations I had -- no. Let me take  
17 that back.

18 I believe this might be a gross number  
19 based on 1099 statements.

20 Q. You said might be.

21 A. I think. I don't know. I don't  
22 recall what this number is based on at this moment  
23 in time.

24 RQ MR. FORTINSKY: We would call for the  
25 production of the documents that establish,

1 J. Fischman

2 if we don't have them already, call for  
3 production of documents that establish the  
4 basis of the 170,000 and also whether it's  
5 inclusive or not of the expenses you  
6 described.

7 Q. What was your income from real estate  
8 in 2020?

9 A. It was better than this.

10 Q. Can you tell us what it was?

11 A. Maybe two hundred.

12 RQ MR. FORTINSKY: And we would call for  
13 the production of documents establishing the  
14 two hundred thousand dollars also as well as  
15 the question of where the expenses are for  
16 that.

17 A. I believe we have provided the 1099s,  
18 but I think what we haven't provided which is all  
19 the expenses related to that get deducted from  
20 that, like when I file the taxes. So I think we  
21 can agree to provide that information, right.

22 MS. KANE: We can agree to disagree.

23 Q. What about 2021?

24 A. It's good. Doing my very best.

25 Q. Everybody says the real estate market

1 J. Fischman

2 is booming.

3 A. It is a tough market.

4 Q. Is that true?

5 A. The market is very, very competitive.

6 Q. But it is booming; right?

7 A. It is booming with limited inventory.  
8 So if you are lucky enough to have a client that  
9 wins the bidding war, then it is booming, but if  
10 you have clients that are not lucky enough to win  
11 bidding wars, then you have some disappointed  
12 folks.

13 Q. You represent sellers or buyers?

14 A. Both.

15 Q. You get paid a percentage of the sale  
16 either way?

17 A. If I am representing the buyer I get a  
18 percentage of the sale. If I am representing the  
19 seller I get a percentage of the sale.

20 Q. How many houses did you sell in 2021  
21 so far?

22 A. Probably six that have closed. I can  
23 tell you in the last 12 months it's been 14.

24 Q. How about 2020, how many houses were  
25 there?

1 J. Fischman

2 A. I don't have that number in front of  
3 me, but I know that it's been a running 12 months,  
4 about 12 to 12 months. 12 in 12 months and I had  
5 two closings last week. So it became 14 in 12  
6 months.

7 Q. Are you on a June 30th fiscal year is  
8 that why the last 12 months are significant for  
9 you?

10 A. No. It's that I don't keep a running  
11 list on my own, but the multiple listing service  
12 on my home page flashes sales. So that's if I  
13 look at that home page I go oh, that's great 12  
14 and 12.

15 Q. You have a Jennifer Fischman home page  
16 within the Houlihan Lawrence website?

17 MR. BERMAN: Object to form.

18 A. Yes.

19 Q. What was your mother's income from  
20 real estate in 2020?

21 MR. BERMAN: Object to form.

22 A. Zero.

23 Q. How about 2019?

24 A. She may have had some income then. I  
25 don't know what it was though from deals that may

1 J. Fischman

2 have been without me.

3 Q. You didn't do any work on the deals  
4 that she had income from?

5 A. I couldn't say in 2019. She may have  
6 had no income. It may have been 2018 or she had  
7 income from deals that came to fruition before I  
8 started working with her.

9 Q. So was there ever a time when you were  
10 in partnership and she had her own income as well  
11 as you having income?

12 A. No.

13 Q. No?

14 A. No.

15 Q. Looking at the third bullet on the  
16 last page we looked at.

17 One thing I meant to ask also, what  
18 have you earned so far for 2021?

19 A. Gross about \$90,000, gross.

20 RQ MR. FORTINSKY: So again, we will ask  
21 for the documentation for that as well.

22 Q. Going to the benefits, the third  
23 bullet on the page we were last looking at, what's  
24 the basis for saying that the amount of 401(k)  
25 matching was 89,200? I see the next line it says

1 J. Fischman

2 the calculation but what is the rationale for  
3 that?

4 A. That was the match that the company  
5 provided, four percent or .04 percent. I would  
6 have to go back and look at my documents, but I  
7 received matching. The company provided a match.

8 Q. What is the 2.23 million represent?

9 A. I think it's the combination of the  
10 first and the second bullets.

11 Q. I see. I am sorry.

12 A. Okay.

13 Q. What is your basis for seeking damages  
14 in the combined total of three years backpay plus  
15 five years of front pay?

16 A. I believe that if I had had a proper  
17 opportunity to have left the company with an  
18 appropriate reference and also with some notice as  
19 other people had been provided, that I would have  
20 been able to find another position and that I  
21 would have worked for at least another five years  
22 in the legal profession. Probably a lot longer  
23 because -- but 55 I mean I think was a reasonable  
24 age. I could have asked for 60 but I think we  
25 were asking for something reasonable not to be

1 J. Fischman

2 unreasonable.

3 Q. You wrote or the document says  
4 anticipated mitigation of \$120,000 per year for  
5 front pay.

6 Judging from what you told us about  
7 your income this year and last year, that  
8 mitigation appears to be an underestimate; is that  
9 right? Did you agree with that?

10 MR. BERMAN: Object to form.

11 A. Yeah. I think at the time this was  
12 written I wasn't making \$120,000 yet, so. Or  
13 maybe that was 120 after I pay \$50,000 in legal  
14 fees and associated with trying to get my  
15 unemployment insurance and other expenses that I  
16 had. So maybe that was an estimate based on that  
17 and then you know, we didn't expect me to be  
18 making more than 170 would be a great amount for a  
19 realtor to make and probably close to what I made  
20 in that year and probably close to what I made  
21 last year too. Not much more certainly.

22 Q. What's the price of the average home  
23 in the Scarsdale area?

24 A. About a million five.

25 Q. About a million five.

1 J. Fischman

2 And what percentage do you get when  
3 you close a deal?

4 A. Well, it is more complicated than what  
5 percentage I get and it is also propriety. I am  
6 not sure I can reveal how that all is calculating.

7 Q. My impression is that real estate  
8 agents get five percent of the closing  
9 transaction.

10 A. I don't get five percent.

11 Q. With rough math you said you closed 12  
12 deals. You said up to 14 deals over the past year  
13 or so?

14 A. Yes.

15 Q. So if the average closing, average  
16 price is about a million and a half and you closed  
17 14, then the sale price in the aggregate is 21  
18 million dollars and five percent of 21 million  
19 dollars and ten percent would be 2.1 million and  
20 five percent would be 1.05 million based on my  
21 rough math. That seems like a lot more than what  
22 you told us.

23 So my question to you is: Do you have  
24 any basis, without invading anything that's  
25 propriety, do you have any basis to quarrel with

1 J. Fischman

2 the calculation that says, that does the  
3 arithmetic I just did and concludes that your  
4 income over the past year was over a million  
5 dollars?

6 MR. BERMAN: Object to form.

7 Q. You can still answer.

8 MR. BERMAN: You can answer.

9 A. Wow. Would I have loved to have made  
10 a million dollars last year. However, it doesn't  
11 work like that.

12 Q. Why not?

13 A. Because I am not the only broker on  
14 the deal. There are two agents, the seller's  
15 agent and the buyer's agent. The buyer's agent  
16 doesn't always get what the seller's agent gets  
17 first of all. You got to figure at least a 50/50  
18 split. Sometimes it is 30 percent versus 70  
19 percent for the seller. 30 percent for the  
20 buyer's agent. Then that money is paid to the  
21 brokerage. The brokerage then gives me a cut of  
22 that money. So at the end of the day I am  
23 certainly not making a million dollars or anything  
24 close to it. I mean we have given you the 1099s.  
25 So you can go back and look at that and try and

1 J. Fischman

2 figure out, but it's not as lucrative after all is  
3 said and done for each individual agent as you  
4 have just expressed.

5 Q. Let's go off the record.

6 THE VIDEOGRAPHER: We are going off  
7 the record. The time is 5:19.

8 (Recess taken.)

9 THE VIDEOGRAPHER: We are back on the  
10 record at 5:32.

11 BY MR. FORTINSKY:

12 Q. We are back on the record and I have  
13 just a couple of questions on the topic we were  
14 discussing before we broke. We talked about the  
15 records reflecting your income and your counsel  
16 pointed out that we actually do have some  
17 documents. Basically the 1099s reflect your  
18 income.

19 So I want to ask whether the income  
20 reflected on the 1099s is net of the expenses you  
21 described?

22 A. No.

23 Q. It is not?

24 A. No.

25 Q. We are in the middle of the year.

1 J. Fischman

2 Presumably there is no 1099 generated  
3 until the end of the calendar year; correct?

4 A. Correct.

5 Q. What documents, document or documents  
6 would show us your 2021 income?

7 A. I receive an electronic notice of  
8 payment when a property closes.

9 Q. And that would be net of expenses or  
10 not?

11 A. No. That would be a gross on each  
12 particular property sale.

13 RQ MR. FORTINSKY: Those are the  
14 documents that we would ask for production  
15 of.

16 A. For?

17 Q. 2021.

18 A. 2021, sure.

19 Q. And the expenses, I take it your  
20 expenses that you are talking about are all  
21 connected with generating income and therefore  
22 appropriately tax deductible I would assume; is  
23 that fair?

24 A. Yes. We are still getting our feet  
25 wet, if you will, on whether or not we properly

1 J. Fischman

2 documented, for example, mileage in 2019 or most  
3 of 2020. The IRS has certain rules about how you  
4 have to write down every house that you went to  
5 and every business excursion and I was just new at  
6 being an independent contractor and didn't  
7 document it to the satisfaction of the government.  
8 So we are now doing a better job of documenting  
9 it, but I just don't have the car expenses and the  
10 gas expenses from -- let's just say I can document  
11 for your purposes all of my expenses. Whether or  
12 not the IRS accepts the same documentation like my  
13 entire Amex bill versus the individual gas  
14 receipts that you get at the gas station.

15 I don't even think I answered the  
16 question. I have documentation. If you want it I  
17 am happy to provide it.

18 RQ MR. FORTINSKY: We would request the  
19 tax documentation reflecting your business  
20 expenses for, I guess that would be 2017  
21 through 2020.

22 And you mentioned that something about  
23 the government not accepting it.

24 Q. Was there some sort of audit of your  
25 taxes?

1 J. Fischman

2 A. I am under audit for 20 -- yeah,  
3 insult to injury I am being audited for, we, my  
4 husband and I are being audited for 2018 or 2019.

5 RQ MR. FORTINSKY: We would request that  
6 documentation too to the extent it relates  
7 to any business expenses that you claimed on  
8 the tax returns.

9 Q. Did you have any other source of  
10 income other than the real estate business since  
11 leaving MCHA?

12 A. Just the unemployment insurance that I  
13 received \$11,000 I think in 2017. That was my  
14 total income for 2017. Maybe it was a little more  
15 because I did have one month of income at  
16 Mitsubishi.

17 I have no other income other than my  
18 dividend and interest on bank accounts, investment  
19 accounts.

20 Q. You mentioned earlier that you  
21 experienced what you described as emotional,  
22 mentality and physical injuries as well.

23 Are you asserting any compensation in  
24 this case apart from the injuries we just talked  
25 about connected with you losing your job and

1 J. Fischman

2 having to pursue a different career, are you  
3 pursuing any damages, any dollar amounts from the  
4 defendants associated separately with the  
5 emotional, mental and physical injuries that you  
6 referred to?

7 A. I believe that we did put that in this  
8 document.

9 Q. When you say this document, what are  
10 you referring to?

11 A. I am referring to the document you  
12 gave me which is plaintiff's first amended Rule 26  
13 A-1 disclosures.

14 Q. Are you still asserting those damages?

15 A. Absolutely.

16 Q. The reason I ask partly is that I am  
17 going to have to ask you some personal questions  
18 if you are still asserting them.

19 A. Yeah.

20 Q. If you are not, then I am happy to  
21 skip that?

22 A. No. I am expecting you to ask me some  
23 personal questions and I am happy to answer them  
24 to the best of my ability.

25 Q. Thank you.

1 J. Fischman

2 What's the basis for estimating the  
3 emotional distress damages at five hundred  
4 thousand dollars according to the disclosures?

5 MR. BERMAN: Object to form.

6 You can answer the question.

7 A. I had such significant depression.  
8 Such significant anxiety. I was at the verge of  
9 contemplating suicide. I had to start taking  
10 medication to sleep. I still take medication to  
11 sleep. I still have anxiety, all of which was  
12 caused by Mitsubishi and this is a low estimate of  
13 that type of damage.

14 Q. How did you come up with the number?

15 MR. BERMAN: Counsel the witness not  
16 to reveal any attorney-client privileges but  
17 other than that you can answer.

18 A. I feel I can't answer that without  
19 revealing attorney-client privileged  
20 communications.

21 Q. You said you are still experiencing  
22 anxiety and still need sleep medication. You also  
23 mentioned as symptoms depression and the idea of  
24 suicide.

25 Are you no longer experiencing the

1 J. Fischman

2 depression and suicidal ideas?

3 A. I still have some depression. I am  
4 not considering suicide unless we go a lot more  
5 hours in this day. Sorry. Move to strike that  
6 from the record. Just kidding.

7 Q. Are there other symptoms that you have  
8 experienced besides the four that you mentioned?

9 A. Yeah. Lack of consortium with my  
10 husband. You really don't want to do much of  
11 anything when you are depressed and have anxiety  
12 and frankly, when my children. There has been a  
13 lot of anger. There was an incredible amount of  
14 anger.

15 Q. On your part?

16 A. I think in my whole family was very  
17 angry.

18 Q. At whom?

19 A. At Mitsubishi.

20 Q. Based on what you told them?

21 A. Based on what they watched me  
22 experience, but in my immediate family my children  
23 definitely were the recipients of a lot of mood  
24 swings and depression of their mommy. They were  
25 young when this occurred. They know I am involved

1 J. Fischman

2 in a lawsuit because I was unfairly treated. A  
3 lot of sadness. A lot of sadness.

4 Q. And you have seen doctors for those  
5 conditions?

6 A. I see my primary care physician Dr.  
7 Croen with a C. He referred me to a doctor in his  
8 group who has left his group but in his group  
9 called Dr. Isaacs because he first put me on an  
10 antidepressant and it made me -- it didn't make me  
11 undepressed. It made me very tired and it didn't  
12 help. So he recommended that I meet with Dr.  
13 Isaacs and pursue treatment under her guidance of  
14 meditation and learn medication and when we lost  
15 two thirds of our income I didn't feel like I  
16 could spend money on therapy because I had to pay  
17 for other things for my children.

18 Q. Do you want to pause and go off the  
19 record?

20 A. No. That's okay. I knew this was --  
21 we knew you were going to ask questions that would  
22 bring up a lot of emotions. This is the emotional  
23 situation I am dealing with. It is still at the  
24 surface, right. It still four and a half years  
25 later I am still in pain. I am still in pain from

1 J. Fischman

2 this. It is right here, right at the surface. So  
3 you start digging and asking and yeah, I am going  
4 to have an emotional response because it was very  
5 painful and it continues to this day to be very  
6 painful to think about this. To sit in a room  
7 with these people.

8 Q. If you had been terminated on grounds  
9 that you thought were grossly unfair, but had  
10 nothing to do with your gender, how would you have  
11 reacted?

12 MR. BERMAN: Object to form.

13 You can answer.

14 A. I was an employee at will. As the  
15 judge wrote in her decision, the administrative  
16 law judge who made the decision to grant me my  
17 unemployment benefits, Mitsubishi could have  
18 chosen any reason at all to fire this person, but  
19 the reason they chose is not credible. It may  
20 have been unfair and I may have been upset, but it  
21 is much different when the reason is  
22 discrimination.

23 Q. Do you think you reacted worse because  
24 the reason was discrimination?

25 A. Yes.

1 J. Fischman

2 Q. I have never been in a situation that  
3 you are in and my sympathies, but I do want to  
4 ask.

5 If it were me and I understood that I  
6 was fired because of poor performance, I think  
7 that would have been for me a lot more damaging  
8 emotionally than if I understood that I was fired  
9 because of my gender, race or religion.

10 Would you agree that being fired for  
11 reasons of performance is more emotionally  
12 damaging than being fired for, because of your  
13 gender?

14 MR. BERMAN: Object to form.

15 A. I can't answer that question. I can  
16 only speak from what my experience was here. I am  
17 sorry. I think that when you are a man and you  
18 wouldn't be fired for your gender it is hard for  
19 you to really stand in the shoes of someone who  
20 was not overtly -- nobody said oh, let's get rid  
21 of Jennifer. She is a woman. So much more nuance  
22 than that as you have seen in this case.

23 So it's painful and it is difficult.

24 Q. I am not trying to say I can put  
25 myself into your shoes. I am just asking you

1 J. Fischman

2 let's for argument's sake suppose there was --  
3 withdrawn.

4 How do we know that all of the  
5 symptoms that you are experiencing don't simply  
6 flow from the fact that you were terminated for  
7 what was perceived to be poor performance?

8 MR. BERMAN: Object to form.

9 A. What we know that all of the reasons  
10 stated were pretextual. So they were not for poor  
11 performance. So I was fired. I was terminated.  
12 I was retaliated against. I saw the writing on  
13 the wall. It was happening and then the final  
14 straw I was terminated wrongfully and that's what  
15 caused the damages emotional and otherwise.

16 MR. FORTINSKY: Let's look together at  
17 an exhibit that we will mark as Exhibit 26  
18 which is a set of medical records produced  
19 in this case. I don't see Bates numbers on  
20 them. They are not Bates numbered.

21 (Fischman Exhibit 26, a set of  
22 medical records produced in this case,  
23 marked for identification, as of this date.)

24 Q. I am not going to ask you about every  
25 page, just a handful. You can flip through it to

1 J. Fischman

2 see what's in there, but you don't have to read  
3 every single page.

4 Do you generally recognize this set of  
5 records?

6 A. Generally, yeah.

7 Q. What are they?

8 A. They appear to be documents that were  
9 produced by my primary physician at Scarsdale  
10 Medical Group.

11 Q. Let me ask you to turn to what I think  
12 is the eighth or so page. And at the top of the  
13 page it says Scarsdale Medical Group and then  
14 below your name and date of birth it has a date of  
15 4/13/2014.

16 A. Yes.

17 Q. You took -- what does this document  
18 reflect?

19 A. Are you talking about the document  
20 dated 4/13/2014?

21 Q. Right.

22 A. It looks like I met with someone named  
23 Dr. Diego Escobar who says that I presented with  
24 left ear pain.

25 Q. Do you see lower down on the page it

1 J. Fischman

2 says you are taking medication of Synthroid?

3 A. Yes.

4 Q. What was that for?

5 A. I take Synthroid as a thyroid  
6 replacement because I had thyroid cancer in 2007.

7 Q. And then looking further ahead to  
8 page, about five pages more November 19, 2014  
9 asking about the third page of that document.

10 Do you see that there is a list of  
11 medications?

12 A. Yes.

13 Q. Beginning with Zithromax and then by  
14 concluding Zolpidem?

15 A. Okay.

16 Q. What was -- what did you take the  
17 Zolpidem for?

18 A. I don't know why I was taking  
19 Zithromax.

20 Q. Zolpidem I am asking about.

21 A. I am not sure I am on the right page.

22 Q. The page -- so that page is eight  
23 pages past the one we just looked at before. And  
24 at the bottom there is a signature from what looks  
25 to be Kenneth Croen.

1 J. Fischman

2 A. Okay. So this was for, I had asked I  
3 guess we were going to Tanzania on vacation and I  
4 think at that time I asked Ken Croen for Ambien to  
5 take on the flight. This is the first time I ever  
6 asked him for that and I think that Zolpidem is  
7 the generic form of that.

8 Q. Zolpidem is a sedative; isn't it?

9 A. Yes.

10 Q. And it relieves anxiety?

11 A. No. Honestly, I don't know. I think  
12 I was asking for it at this time. It says  
13 traveling to Tanzania. So I think that was I went  
14 in to ask if he had something I could take on the  
15 plane so we would fall asleep on that overnight  
16 plane.

17 Q. Did you experience anxiety prior to  
18 2017?

19 A. Prior to 2017, yes. In, during 2015  
20 yes.

21 Q. Did you ever see a doctor for anxiety?

22 A. Yes. I saw Dr. Isaacs and Dr. Croen  
23 for that anxiety starting in 2015.

24 Q. In what month in 2015?

25 A. Let's go and look shall we.

1 J. Fischman

2 11/13/2015 is the first time I was given anything  
3 for panic attacks and stress. So that was after I  
4 was demoted as you can see.

5 Q. Had you had panic attacks before then?

6 A. No.

7 Q. Had you had any depression before  
8 then?

9 A. No.

10 Q. Had you ever seen a psychiatrist  
11 before November 2015?

12 A. Probably when I was 28 or 29 I saw a  
13 psychiatrist in Los Angeles because I was having  
14 trouble meeting boys. There was that 30-year old  
15 threshold was coming up and I am like I am not  
16 married and that was depressing. So that was a  
17 short period of time.

18 Q. How long did you see -- was it a  
19 psychiatrist or psychologist or therapist or what?

20 A. Psychologist I think and it wasn't for  
21 sleeplessness. It wasn't for anxiety. It was for  
22 loneliness. Just having someone to talk to.

23 Q. How long did you see the psychologist  
24 for?

25 A. Probably a year because I was a young

1 J. Fischman

2 associate at a law firm and it was also very hard  
3 to get away to do that. So I took up golf.

4 Q. Did you see a therapist or  
5 psychiatrist or psychologist of any kind after  
6 that point?

7 A. No.

8 Q. Had you seen a therapist or  
9 psychiatrist or psychologist prior to that point?

10 A. I saw a psychiatrist again in my early  
11 twenties when I was trying to figure out what I  
12 wanted to do with my life.

13 Q. And that was the kind of psychiatrist,  
14 meaning someone who writes drug prescriptions?

15 A. Yeah, but I never prescription from  
16 him. He was really more of a family friend  
17 actually.

18 Q. Did you in connection with either of  
19 those conditions that you saw somebody for, did  
20 you experience depression?

21 A. No. Not in the same -- not  
22 depression. I think it was more, like I said,  
23 loneliness in Los Angeles because it is an  
24 isolating city in a way and when I was in my early  
25 twenties I think it was more about the existential

1 J. Fischman

2 meaning of life. Now that you are done with --  
3 where everybody expects you to go to college and  
4 it was sort of finding myself in a way. Finding  
5 myself led me right to law school at 25.

6 Q. Did you ever experience anxiety prior  
7 to 2015?

8 A. No.

9 Q. Did you ever experience suicidal ideas  
10 prior to 2015?

11 A. No.

12 Q. Did you ever experience -- did you  
13 ever have a need for -- sorry.

14 Did you ever experience insomnia or  
15 sleep problems prior to 2015?

16 A. No.

17 Q. When did you first experience anxiety  
18 in connection with -- when did you first  
19 experience symptoms of anxiety?

20 A. It all began around the end of 2015  
21 around the time that I was demoted.

22 Q. And when you say it all began, you  
23 mean the other symptoms as well that you  
24 mentioned?

25 A. Yeah.

1 J. Fischman

2 Q. When did you first have suicidal  
3 ideation?

4 A. That was probably in the early 2016  
5 and then again in just -- and then again in 2017,  
6 February 2017.

7 Q. Was there something in particular that  
8 brought those on?

9 A. In 2016 it was brought on by my  
10 replacement of me as the general, acting general,  
11 or general counsel by Nick Oliva and in 2017 it  
12 was the termination by the company that brought it  
13 on.

14 Q. The reason I ask is that you had first  
15 said that it was in late 2015, November 2015  
16 around the time of the job issues we talked about.  
17 And then you said in 2016 which is presumably  
18 later than that that you said you first had these  
19 ideas of suicide.

20 So my question therefore was: Was  
21 there something past that initial November 2015  
22 issue?

23 A. No. It was just learning to deal with  
24 the reality of, with just the continuation of this  
25 reality.

1 J. Fischman

2 Q. I take it you never actually sought to  
3 carry those ideas, those suicidal ideas out?

4 A. No.

5 Q. You said you saw Dr. Croen and Dr.  
6 Isaacs.

7 What kind of doctor was Dr. Isaacs?

8 A. She was an internal medicine doctor  
9 but also mind, body, alternative medicine doctor  
10 in the practice group who Dr. Croen, who is also  
11 an internal medicine but a very highly regarded  
12 doctor, recommended that if I wasn't going to seek  
13 -- he said that meditation and -- that meditation  
14 had been very, very useful for other executives  
15 that he knew who had encountered great stress and  
16 he suggested that perhaps I try meditation,  
17 learning meditation with Dr. Isaacs instead of  
18 medicating if the medication wasn't working.

19 Q. So did you see Dr. Croen in connection  
20 with your treatment for any of the symptoms you  
21 attributed to your termination?

22 A. I continued to see Dr. Croen and I  
23 continue to see him frequently because he is my  
24 general doctor. So yes, he has continued to  
25 provide me with antianxiety Xanax medication and

1 J. Fischman

2 the Ambien medication that I take from time to  
3 time so that I can get a good night's sleep or get  
4 through the day.

5 Q. You experienced this itchiness?

6 A. Yes.

7 Q. In your feet?

8 A. Yes.

9 Q. You experienced that before you were  
10 terminated; right?

11 A. Yes.

12 Q. And in fact you experienced that  
13 before you were demoted as well; correct?

14 A. Actually, it was during the Fall of  
15 2014 that coincides with the sort of negative  
16 interactions that I am beginning to have at the  
17 office. So I would say that it started as I was  
18 starting to feel this increased negative pressure  
19 from my supervisor at the time.

20 Q. This symptom about the itchiness  
21 started in 2014 before you were being elevated to  
22 acting general counsel; right?

23 A. I guess it did.

24 Q. And you said it has to do with the  
25 pressure you felt at work?

1 J. Fischman

2 A. I believed it was. I guess it did  
3 start before that.

4 Q. So you think the pressure you felt at  
5 work even in 2014 had affects on you physically  
6 and emotionally?

7 A. Well, now I can't say that. I had  
8 always believed it was 2015 that it began, but  
9 here this says 2014. So it certainly wasn't  
10 helped by the stress I felt at work as it  
11 continued for a number of years.

12 Q. Did you think that the symptoms were  
13 stress induced?

14 A. They may have been.

15 Q. When I say the symptoms, I mean the  
16 problem with your itchy feet. Correct me if there  
17 is a better way to characterize it.

18 A. It's possible that they were brought  
19 on by some epidemiological means like some  
20 infection, but then they never -- it never went  
21 away. So it's possible that it started from some  
22 other outside third source and then became worse  
23 over the course of the great stress that I was  
24 under.

25 Q. Is it possible that it was initially

1 J. Fischman

2 because of the stress of a demanding job?

3 A. I mean I don't know. You would have  
4 to go back and ask this doctor whether that was  
5 the case.

6 Q. Let's look at the medical record dated  
7 11/13/2015. So on this page you see where it says  
8 "Very stressed by work. Can't deal with her boss.  
9 She was made head of compliance, but very stressed  
10 by interactions with boss."

11 A. Those are the notes that briefly  
12 written down by the doctor based on a much longer  
13 conversation or a very short conversation. I  
14 really couldn't say, but I did go in there and say  
15 I can't sleep. I am very stressed by my work  
16 situation. I probably told him about the demotion  
17 but he didn't write it down since it was just a  
18 few days earlier.

19 Q. Did you also tell him that these  
20 problems had gone on since July? Let me direct  
21 you to the last line of that first set of notes.

22 You see where this has been a problem  
23 since July?

24 A. Yeah, because that's when all the  
25 negativity began. Yeah.

1 J. Fischman

2 Q. That was before you were demoted;  
3 right?

4 A. But that was after the negative  
5 interactions began with Donna.

6 Q. But it was before you were demoted;  
7 right?

8 A. It was before I was demoted, but after  
9 I was not given the general counsel position. So  
10 it is after that and now it becomes clearer that  
11 there is no intention, no intention. So they are  
12 going to demote me. They are going to get rid of  
13 me. So yeah, it was before the actual demotion  
14 but it was after the failure to promote a few  
15 months earlier.

16 Q. It was after your promotion to acting  
17 general counsel; right?

18 A. It was after their failure to promote  
19 me to full general counsel.

20 Q. Would you have been better off if you  
21 were never promoted to acting general counsel?

22 MR. BERMAN: Object to form.

23 A. I think I would have been better off  
24 if I had been fully supported to be promoted as  
25 general counsel.

1 J. Fischman

2 Q. That's not my question.

3 My question is: Would you have been  
4 better off if you were never promoted to acting  
5 general counsel?

6 A. I can't say.

7 Q. So is it fair to say that these  
8 symptoms as described in this medical record from  
9 November of 2015 and as you have testified about  
10 today began in July 2015?

11 A. It may have been so since July  
12 probably, but I didn't seek assistance because it  
13 was manageable.

14 Q. On that same page there is a notation.  
15 Let's see if I can find it. There is a notation  
16 at the top of the third page of that particular  
17 record, that medical visit record, that says "Look  
18 at situational work related. Looking to change  
19 jobs."

20 Were you looking to change jobs at  
21 that point?

22 A. He probably said to me because he has  
23 said it, you know one way to avoid stress is to  
24 change jobs. So I had just been demoted. I am  
25 certain that I said to him yeah, I probably ought

1 J. Fischman

2 to change jobs, but I felt very strongly and  
3 comitted to Mitsubishi. So there I stayed.

4 Q. You said that you could see the  
5 writing on the wall, I am paraphrasing, but you  
6 said that you began to see, experience pressures  
7 at work in July.

8 When did you first begin, as it says  
9 here, looking to change jobs?

10 A. I don't think I looked to change jobs.

11 Q. When did you first start thinking  
12 about changing jobs?

13 A. January 31, 2017.

14 Q. On the page that begins, the office  
15 visit, on the record reflecting the office visit  
16 of 3/7/2016. Tell me when you have it.

17 A. Yes.

18 Q. You see where it says "Reading the  
19 book I shared, Real Happiness. More aware she is  
20 overreacting to things. Feeling bored with  
21 meditation."

22 Can you explain what that refers to or  
23 at least what you said that prompted that note?

24 A. Well, I was just starting meditation.  
25 This is in the early days of learning meditation

1 J. Fischman

2 and so I was just learning how to meditate and  
3 sometimes sitting quietly for 20 minutes or ten  
4 minutes or five minutes is hard to do until you  
5 kind of train yourself to do it and this is very  
6 early on in that training. So I said well, it is  
7 boring right when you are used to moving all the  
8 time.

9 Q. And what was it you said that prompted  
10 the notation "more aware she is overreacting to  
11 things"?

12 A. I don't know what she is referring to  
13 on that. I did enjoy the book Real Happiness. It  
14 was an interesting read on how people learn to  
15 adopt meditation in their busy lives and how that  
16 brings them more peace and I don't know why she  
17 would write that I was overreacting to things, so  
18 I couldn't say.

19 Q. Was it true you overreacted to things  
20 in or about March of 2016?

21 A. It's possible that at home in my home  
22 life that I overreact to the children or life's  
23 various stresses because I was feeling unhappy at  
24 this time.

25 Q. And the note says you were more aware.

1 J. Fischman

2 Were you more aware of this tendency  
3 to overreact than you had been previously?

4 A. No. I don't know what she means by  
5 that.

6 Q. Do you think that your career was ever  
7 affected by a tendency to overreact?

8 MR. BERMAN: Object to form.

9 A. No, I don't. I had a great career. I  
10 had increasing levels of responsibility in every  
11 job that I'd ever had. I was an amazing listener,  
12 counsel, counselor, legal advisor. I was an  
13 expert in multiple fields. Not an expert might be  
14 too strong. I knew where to find the answers. So  
15 if I reacted quickly we know that in two or three  
16 of the e-mails I reacted too quickly. Did that  
17 affect my legal career? I think that you and I  
18 both know many lawyers who are very highly  
19 reactive. In fact, I worked with a number of them  
20 during my career at Fried Frank and Paul Hastings  
21 and even at Raytheon who were reactive. In fact,  
22 Donna Costa herself has admitted to being too  
23 reactive sometimes.

24 Does that affect our ability to  
25 provide legal advice, no. Does that affect our

1 J. Fischman

2 ability to be a good counsel, no.

3 Q. Do you think being overreactive  
4 affects lawyers ability to interact successfully  
5 with their clients?

6 A. Occasionally it can.

7 Q. Do you think that was --

8 A. I think that 99 percent of the time it  
9 did not, I did not overreact and I had no problem  
10 communicating effectively with the vast number of  
11 my clients.

12 Q. Have you consulted with any physicians  
13 for purposes of this lawsuit?

14 A. No.

15 Q. Have you ever filed any other lawsuit  
16 or complaint of any kind?

17 A. No.

18 Q. As inhouse counsel you had clients in  
19 litigation from time to time; correct?

20 A. Yes.

21 Q. Genomatica was one example we talked  
22 about.

23 How many others were there  
24 approximately?

25 A. Just a handful over the years. I

1 J. Fischman

2 would say maybe like a dozen, two dozen. Each of  
3 the companies that I supported may have  
4 encountered some level of litigation or claims  
5 against them and I would be happy to go through  
6 each and every one of them if you would like to.  
7 I can probably recall a lot of the facts and data  
8 about each of them because I was very thoroughly  
9 involved.

10 Q. Have you ever represented MCHC in any  
11 litigation?

12 A. MCHC is a shell company that has a lot  
13 of people working in both MCHC and its  
14 subsidiaries. So indirectly all of the companies  
15 that I represent are MCHC.

16 Q. I am just talking about the entity  
17 itself not the personnel. I'm just talking about  
18 the entity.

19 Did you ever represent MCHC in  
20 litigation?

21 A. No.

22 Q. Did you ever represent any affiliate  
23 of MCHC or MCHA in litigation where another such  
24 affiliate was also sued?

25 A. Yes.

1 J. Fischman

2 Q. In any of those -- how many times?

3 A. Several.

4 Q. In any of those cases, did the  
5 claimant or plaintiff ever allege that one of  
6 those affiliates should be responsible or liable  
7 for the conduct of the other or others?

8 A. Possibly.

9 Q. When?

10 A. There maybe, there may have been  
11 allegations in that regard.

12 Q. Tell me the allegations. You said you  
13 recall the litigations pretty well.

14 So what were the allegations?

15 A. Some of the litigation that I managed  
16 were for companies that were no longer in  
17 existence. So the company, the liability would be  
18 managed by the parent company.

19 Q. The parent company being MCHC?

20 A. Being MCC, MCHC or MPI or a Pharma  
21 company.

22 Q. In any of those litigations, was there  
23 an allegation by the claimant or plaintiff that  
24 one of the entities should be responsible for the  
25 conduct of the other?

1 J. Fischman

2 A. No. It is a hard question to answer  
3 because it is not that clear, but I don't think  
4 so.

5 Q. You refer in your complaint to Bill  
6 Radlien.

7 Who is he?

8 A. Bill Radlien will be, is the president  
9 of Mitsubishi Polyester Film.

10 Q. Does he work or has he ever worked for  
11 MCHA?

12 A. No.

13 Q. What discussions, if any, did you have  
14 with Mr. Radlien about your appointment as acting  
15 general counsel?

16 A. I met with bill in April of 2015 in  
17 Greer, South Carolina. He picked me up at my  
18 hotel, the Hyatt I was staying at. We met for a  
19 couple of drinks at the bar and then we went to  
20 dinner and had a couple more drinks during dinner  
21 and during the course of dinner we talked about my  
22 appointment as acting rather than the full general  
23 counsel position.

24 Q. How did the subject come up?

25 A. It was just a general. This was only

1 J. Fischman

2 three weeks after it had been announced that I had  
3 gotten this role. So it was just a general  
4 conversation.

5 Q. Did he raise the subject or did you  
6 raise the subject?

7 A. I don't recall. I think he did  
8 probably.

9 Q. What do you recall him saying?

10 A. I recall him saying well, I heard that  
11 Donna persuaded a whole lot of people in Japan to  
12 let her be president, but that she didn't have the  
13 political capital to get you through. Those were  
14 his words.

15 Q. Get you through as?

16 A. As GC.

17 Q. But presumably she had the capital to  
18 get you into the slot as acting general counsel?

19 A. As a placeholder, sure.

20 Q. Did Mr. Radlien tell you who he had  
21 heard that from?

22 A. Well, he had interaction with a lot of  
23 executives in Japan in his role as president of  
24 that company and I assumed it was Japanese  
25 executives that he interacted with that told him

1 J. Fischman

2 that.

3 Q. But he didn't tell you who he had  
4 heard it from?

5 A. No, he did not.

6 Q. It is common when people meet for  
7 drinks with colleagues, people in the same  
8 organization, for them to gossip a little bit; is  
9 that fair to say?

10 A. It's possible.

11 Q. It is even common you would say, is  
12 that fair?

13 A. It's quite possible.

14 Q. And it is common for people to  
15 speculate about the motives and plans of other  
16 people in the company; is that fair?

17 A. I don't know.

18 Q. Is it possible that Mr. Radlien was  
19 giving you his judgment, speculation about what  
20 might have been going on?

21 A. I didn't think that was possible  
22 because I knew Bill pretty well and he had no  
23 reason to speculate on such a matter when it was  
24 my future that he was talking about. So, and he  
25 knew Donna pretty well and he knew the business

1 J. Fischman

2 pretty well. I did not believe that he was  
3 speculating. I believe he had heard that from a  
4 Japanese executive and that he had learned about  
5 the various discussions or meetings that had taken  
6 place in Japan in order for Donna to be elevated  
7 into that position and he certainly made it seem  
8 like he was well briefed on the subject matter.

9 Q. When was the last time you spoke to  
10 Mr. Radlien?

11 A. Sometime in 2016 probably.

12 Q. So you haven't spoken to him since  
13 your termination?

14 A. No.

15 Q. How about indirectly, have you spoken  
16 to him indirectly?

17 A. No.

18 Q. What did you say in response to Mr.  
19 Radlien in the conversation you described?

20 A. I did not respond very much because I  
21 felt very, very upset by this statement that he  
22 made because it reinforced what I was led to  
23 believe in my communications with Donna in  
24 December of 2014 and I had just started the  
25 position and I really wanted the opportunity to

1 J. Fischman

2 prove that I was going to stay in that position  
3 and I was very, very sad to hear that no one in  
4 Japan had the confidence to promote me based on  
5 absolutely nothing other than what I believe was  
6 my gender because they all were very appreciative  
7 of all the work I had done over all the years I  
8 had been there.

9 Q. I think you had told us earlier you  
10 already perceived that you were already unhappy  
11 that you were given just the acting general  
12 counsel title and already perceived that that was  
13 a slight?

14 A. Yes.

15 Q. And that you were not being given the  
16 role; right?

17 A. Yes.

18 Q. So why were you sad when Mr. Radlien  
19 said effectively, what information, what new  
20 information did Mr. Radlien add that changed your  
21 perception of things?

22 A. I don't think he changed my perception  
23 of things. I think that he just confirmed my  
24 perception of things and that was disappointing  
25 again.

1 J. Fischman

2 Q. You also said you spoke to Dennis  
3 Trice?

4 A. Mm-hmm.

5 Q. When was that?

6 A. The following day at lunch.

7 Q. Who is Dennis Trice?

8 A. Dennis was at the time the CEO of  
9 Mitsubishi Polyester Film.

10 Q. Do you know whether he and Mr. Radlien  
11 ever discussed you and your promotion? Not you.  
12 Do you know whether he and Mr. Radlien ever  
13 discussed your promotion?

14 A. No, I don't know.

15 Q. When did you last speak to Mr. Trice?

16 A. Sometime in 2017. 2016.

17 Q. What was the setting for the  
18 conversation between you and Mr. Trice that you  
19 described in the complaint?

20 A. It was his country club someplace in  
21 South Carolina near the company. We went to lunch  
22 and again, this topic of acting general counsel  
23 and Donna's promotion to president not acting  
24 president but president and my position as acting  
25 and that again he implied that it was a big deal

1 J. Fischman

2 for her to become president. That there was just  
3 no more room at the head of the table.

4 Q. You said implied. I didn't mean to  
5 cut you off. Go ahead.

6 A. That there was just not room for two  
7 women at the top of the ladder at Mitsubishi  
8 Chemical.

9 Q. And that was his judgment?

10 A. Actually, that was Bill Radlien's  
11 judgment and in conversation with Dennis Trice  
12 without asking him directly we talked about it in  
13 a more general sense and he confirmed that was the  
14 case as well.

15 So I know what you are going to say  
16 well, what specifically. So Dennis was more  
17 measured and is more measured. Is a much more  
18 measured speaker than Bill Radlien and in his  
19 speech to me in our conversation I asked questions  
20 like was it difficult for Donna to get promoted.  
21 She's worked so hard kind of thing. Yes, that was  
22 a big leap for MCHC because there had never been a  
23 woman president at any company. And then we  
24 probably discussed -- then we discussed my  
25 becoming acting and of course I was very

1 J. Fischman

2 complimentary of the work that Donna had always  
3 done before me and I said it seems like she  
4 couldn't have gotten me through at this time and  
5 he sort of looked at me and nodded yeah.

6 Q. Did he say anything more than just  
7 nodding and saying yeah on the subject of your  
8 being moved into the acting general counsel  
9 position?

10 A. Like I said, Dennis was much more  
11 measured in his speech. So it was more of an  
12 innuendo.

13 Q. And what did you infer? Sorry. What  
14 was the basis of your inference about what his  
15 saying yeah meant?

16 A. I inferred, as I had previously  
17 stated, that what Bill had confirmed to me the  
18 evening before which was that there would not be  
19 two women leading this New York based MCHA. That  
20 it was never going to be me. That's what I  
21 inferred.

22 Q. When did you first anticipate you  
23 would be demoted?

24 A. That's an interesting question. Since  
25 I wasn't given the full job to begin with, I

1 J. Fischman

2 suppose I thought it could be at any time during  
3 the course of 2015.

4 Q. I wasn't asking when you thought the  
5 demotion moment would be.

6 I was asking when you first perceived  
7 that you were going to be demoted?

8 A. On the day that they gave me my -- the  
9 day they told me. I didn't actually know that it  
10 was coming.

11 Q. The day that you were demoted you  
12 didn't anticipate it before then?

13 A. No, not really.

14 Q. Despite the stresses and difficulties  
15 that you described dating to July of that year?

16 A. Yeah. The tone of the office had  
17 become more strained. Donna really stopped  
18 talking to me and even any interactions we had  
19 were very strained. So I was hoping to always  
20 mend relationships. Always hoping to not have  
21 strained conversations. I was always looking for  
22 assistance from Pat to help with that, but no,  
23 nobody said you are going to be demoted, no and I  
24 didn't know until the day it happened.

25 Q. What was the cause of those strains

1 J. Fischman

2 you just mentioned?

3 A. You will have to ask Donna, but she  
4 has at some point along the way in July decided  
5 that it was enough. That she and they were going  
6 to replace me and then she ended up creating  
7 interactions with me that were difficult and I was  
8 very busy and I was really trying my best and  
9 really working hard and somewhere around the  
10 beginning of August she walked into my office and  
11 accused me of having a mental breakdown when I was  
12 just sitting there working. So it was from like  
13 that point forward, maybe that was August 6th. It  
14 was from that point forward that every interaction  
15 we had because I got upset with that because it  
16 felt like why, where is this even coming from and  
17 she was so visibly angry with me and I didn't know  
18 why, and from that point forward there was  
19 strained communications.

20 Q. Did you ask her why she was angry at  
21 you?

22 A. No.

23 Q. Did she explain in that conversation  
24 why she was unhappy with you?

25 A. She suggested that I was overworked

1 J. Fischman

2 and that I was taking on too much responsibility  
3 and that the Brazil acquisition that she would  
4 just work with another person in the legal  
5 department which I said she should do and then she  
6 said she didn't want to do that, be responsible  
7 for that because she is no longer general counsel.  
8 And I tried to stay involved in that, but I pulled  
9 back a little bit, yeah.

10 Q. What did she say in that conversation  
11 about you having a mental breakdown?

12 A. I said she walked into my office at  
13 about 6 o'clock at night and accused me of having  
14 a mental breakdown.

15 Q. Did she elaborate on that at all?

16 A. No.

17 Q. How did you respond?

18 A. I think I just said actually. So if  
19 you want we can just read back what I just  
20 answered because I just went through the  
21 conversation.

22 Q. Nothing more than what you just said.

23 Were there any other incidents in  
24 which you recall Ms. Costa expressing anger or  
25 dissatisfaction with you during the period you

1 J. Fischman

2 were functioning as acting general counsel?

3 A. Not really, no. I know now through  
4 discovery that she from that moment forward  
5 started sending e-mails to Japan wanting to  
6 terminate me and asking for approval from Ken  
7 Fujiwara, the head of legal at MCHC, and I know  
8 now from those e-mails that she felt she couldn't  
9 work with me, but there was nothing in our  
10 day-to-day interactions or any e-mails between the  
11 two of us that communicated that to me at all.

12 I continued to seek -- I continued to  
13 do my job. I continued to manage all the legal  
14 department and the businesses but she never came  
15 to me until there was a text she wrote me or a  
16 short, I guess it is not a text but a quick e-mail  
17 that she wrote that she somehow didn't know how to  
18 talk to me during that period and I really found  
19 that so curious because there had been no other  
20 communication before that. So it was like she was  
21 building this case but I don't know where it was  
22 coming from. I had no problem having  
23 conversations with her. I had no problem doing  
24 the work assigned to me. I know problem training.  
25 Steven Rose to come up as a first year inhouse

1 J. Fischman

2 lawyer. I had no problem sitting down with the  
3 other lawyers and hearing about what they were  
4 working on and giving them assistance or guidance.  
5 So I really didn't know where this was coming  
6 from.

7 Q. Did she ever at any other time express  
8 concern about your mental health or about you  
9 having a mental breakdown or anything similar to  
10 that?

11 A. No.

12 Q. Do you recall saying earlier in this  
13 deposition the last day that Ms. Costa is a liar?

14 MR. BERMAN: Object to form.

15 A. Let me clarify what I said. I believe  
16 that the November 2015 mid-year performance review  
17 is a complete fabrication of the actual events  
18 that occurred during that time period that are  
19 denoted in that paper. Ms. Colwin asked me a  
20 number of hypotheticals in order to elicit a  
21 response. In fact, testifying herself on the  
22 record a number of times as to what Ms. Costa  
23 might say or may not say in the course of her  
24 testimony in which case she asked me if so and so  
25 said such and such, would that be a lie and I said

J. Fischman

yes, that would be a lie. But let me clarify that. If Ms. Costa says something that I disagree with, perhaps it is not a lie but a misinterpretation of the events or misunderstanding of the events that we both experienced.

Q. Did you perceive her to be lying to you at any time up to the point of your termination?

A. I have noted a variety of fabricated incidents. So I think as of about November of 2015 I no longer trusted her to tell me any truth whatsoever.

Q. The fabricated documents that you refer to like the review, did you see them prior to discovery?

A. Yes. I saw the review when I sat in the --

Q. That was shown to you?

A. -- in the meeting. It was shown to me.

Q. Let's look at that document.

Let's mark as Exhibit 27 Defense 1714 is the Bates number. It may have been marked

1 J. Fischman

2 earlier as an exhibit the first day. Why don't we  
3 come back to that in the interest of moving things  
4 along.

5 A. Can we go off the record for a moment?

6 Q. Sure.

7 THE VIDEOGRAPHER: Going off the  
8 record at 6:56.

9 (Recess taken.)

10 THE VIDEOGRAPHER: Back on the record  
11 at 7:15.

12 MR. FORTINSKY: We have just had a  
13 colloquy off the record in which the  
14 witness' counsel has said that she is tired  
15 and finished for the day and the plaintiff's  
16 counsel wants to close the questioning for  
17 this deposition here and I objected on  
18 behalf of all defendants to the production  
19 of documents by the plaintiffs late Friday  
20 afternoon right before this deposition was  
21 to begin Monday morning. A whole set of  
22 documents that we had not seen before and  
23 have said it would be highly improper for  
24 the plaintiffs, plaintiff's counsel to cut  
25 off questioning here under those

1 J. Fischman

2 circumstances and especially in light of the  
3 e-mails between us on the subject matter, on  
4 the subject of how long the deposition will  
5 go.

6 Plaintiff's counsel, and he can  
7 certainly add to this for himself, but  
8 plaintiff's counsel has said that the  
9 witness is tired and that they will leave  
10 the deposition now. I have proposed that  
11 we -- I have said that they can't  
12 unilaterally cut off the questions without  
13 giving us the chance to ask about the  
14 documents just produced. They said -- I  
15 offered to finish in 30 minutes and they  
16 have said that they will collectively  
17 consider that. I have said that I will hold  
18 off on going to the judge to get additional  
19 time until I hear back from them as to their  
20 intentions.

21 MR. BERMAN: I think that's an  
22 accurate representation of our conversation.

23 So anything further counselor?

24 MR. FORTINSKY: Nothing further except  
25 to say of course the deposition remains open

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J. Fischman  
at this point.

MR. BERMAN: And we object. Thank  
you.

THE VIDEOGRAPHER: This concludes  
today's deposition. The time is 7:17 and we  
are now off the record.

(Time Noted: 7:17 p.m.)

JENNIFER FISCHMAN

Subscribed and sworn to before me  
this            day of            , 2021.

(Notary Public)            My Commission Expires:

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, LYNNE D. METZ, a Shorthand Reporter  
and a Notary Public within and for the State of  
New York, do hereby certify that the foregoing  
deposition of JENNIFER FISCHMAN was taken before  
me on the 28th day of June, 2021;

That the said witness was duly sworn  
before the commencement of her testimony; that the  
said testimony was taken stenographically by me  
and then transcribed.

I further certify that I am not  
related by blood or marriage to any of the parties  
to this action or interested directly or  
indirectly in the matter in controversy; nor am I  
in the employ of any of the counsel in this  
action.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 13th day of July, 2021.



LYNNE D. METZ

June 28, 2021

# I N D E X

WITNESS	EXAMINATION BY	PAGE
JENNIFER FISCHMAN	MS. COLWIN	275
	MR. FORTINSKY	346

## ----- INFORMATION REQUESTS -----

DIRECTIONS (DI) :	None
INSERT:	None
RULINGS (RL) :	None
REQUESTS (RQ) :	477, 489, 490, 493, 499, 500, 501
CERTIFIED (CE) :	None
MOTIONS (MO) :	300, 302, 322, 325, 337, 341, 351, 372, 392, 403, 428, 473

# E X H I B I T S

Fischman Exhibits	For ID
Exhibit 1, a document Bates stamped 864 to 865	276
Exhibit 2, a document Bates stamped 1102 through 1103	279

1		
2	Exhibit 3, a document Bates stamped 590	280
3	to 599	
4	Exhibit 4, a document Bates stamped	294
5	Exhibit 5, a document Bates stamped 876	294
6	and 877	
7	Exhibit 6, a document Bates stamped	295
8	1842 to 1847	
9	Exhibit 7, a document Bates stamped	299
10	1907 to 1908	
11	Exhibit 8, a document Bates stamped	300
12	2301 through 2302	
13	Exhibit 9, a document Bates stamped 882	301
14	to 883	
15	Exhibit 10, a document Bates stamped	302
16	884 through 886	
17	Exhibit 11, a document Bates stamped	307
18	2322	
19	Exhibit 12, a document Bates stamped	310
20	2315 through 2316	
21	Exhibit 13, a document Bates stamped	312
22	844 and 845	
23	Exhibit 14, a document Bates stamped	318
24	842 to 843	
25	Exhibit 15, a document Bates stamped	325

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2	838 through 841	
3	Exhibit 16, a document Bates stamped	338
4	806 to 807	
5	Exhibit 17, the first amended complaint	359
6	Exhibit 18, a document Bates stamped	368
7	465 and 466	
8	Exhibit 19, a document identified with	390
9	Bates numbers 1218 through 1229	
10	Exhibit 20, a document previously	393
11	identified in this case by Bates	
12	numbers Defendant 1208	
13	Exhibit 21, a document produced with	395
14	Bates numbers Defendant 1066 through	
15	1068	
16	Exhibit 22, a document Bates stamped	400
17	1109 and 1110	
18	Exhibit 23, a document Bates stamped	415
19	489 and 490	
20	Exhibit 24, a copy of the EEOC	425
21	complaint Bates stamped Fischman	326
22	through 328	
23	Exhibit 25, the amended initial	479
24	disclosures	
25	Exhibit 26, a set of medical records	508

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produced in this case

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(Exhibits retained by the court reporter and attached.)

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<b>&amp;</b>	<b>1102</b> 279:8,11,13 293:20 546:25	<b>16</b> 338:15,17 433:24 484:12 548:3	<b>2.2.</b> 306:21
<b>&amp;</b> 272:4 273:2	<b>1103</b> 279:8,11,13 293:20 546:25	<b>17</b> 359:16,18 449:4 449:5 484:12 548:5	<b>2.23</b> 494:8
<b>0</b>	<b>1109</b> 400:2,4 548:17	<b>170</b> 495:18	<b>2.3</b> 306:21 310:19 312:18 313:16 316:19,25 317:15 320:13,16,17 321:13,22 322:10 326:5,8,10,12,24 328:2,11,19 340:19 341:9 342:19 343:2
<b>04</b> 494:5 <b>08188</b> 270:7 274:9	<b>1110</b> 400:2,4,8 406:4 548:17	<b>170,000</b> 488:14 489:12 490:4	<b>2.5</b> 301:10 320:8
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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1  
2 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

3 -----X  
JENNIFER S. FISCHMAN,

4  
5 PLAINTIFF,

6 -against- Civil Action No.:  
18-CV-08188

7  
8 MITSUBISHI CHEMICAL HOLDINGS AMERICA, INC.;  
MITSUBISHI CHEMICAL HOLDINGS CORPORATION;  
9 NICOLAS OLIVA, in his individual and  
professional capacities; DONNA COSTA, in  
10 her individual and professional capacities;  
and JOHN DOES 1-10, in their individual and  
11 professional capacities,

12 DEFENDANTS.

13 -----X  
14 DATE: July 26, 2021  
15 TIME: 11:24 A.M.

16  
17 CONTINUED VIDEOTAPED VIDEO CONFERENCE  
18 DEPOSITION of the Plaintiff, JENNIFER STONE  
19 FISCHMAN, s/h/a JENNIFER S. FISCHMAN, taken  
20 by the respective parties, pursuant to  
21 Agreement and to the Federal Rules of Civil  
22 Procedure, held at the above-mentioned date  
23 and time, before Frances Fitzpatrick, a  
24 Notary Public of the State of New York.  
25

A P P E A R A N C E S:

(Via Video Conference)

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File # MCHM-1135398

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A P P E A R A N C E S: (Continued)

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A L S O P R E S E N T:

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Legal Videographer - Carlos King

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Nicolas Oliva

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F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

\* \* \* \*

1 JENNIFER STONE FISCHMAN

2 J E N N I F E R S T O N E

3 F I S C H M A N, called as a witness,  
4 having been first duly sworn by a Notary  
5 Public of the State of New York, was  
6 examined and testified as follows:

7 THE REPORTER: May I have your  
8 name and address?

9 THE WITNESS: Jennifer Stone  
10 Fischman.

11 MR. BERMAN: For her address,  
12 you can put C/O Valli Kane & Vagnini,  
13 600 Old Country Road, Suite 519,  
14 Garden City, New York, 11530.

15 THE REPORTER: Thank you.  
16 Ready when you are.

17 MR. FORTINSKY: Thank you,  
18 Frances. I'll just say as we begin  
19 that we appreciate your being with us  
20 by video even though you couldn't be  
21 here in person, but, accordingly,  
22 let's -- please don't hesitate if you  
23 can't get something down if it's not  
24 recorded properly because obviously  
25 we rely on your for the transcript,

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2 so, don't hesitate to speak up.

3 THE REPORTER: Thank you.

4 EXAMINATION BY

5 MR. FORTINSKY:

6 Q. Good morning, Ms. Fischman. As  
7 you know, I'm Jerry Fortinsky. I'm with  
8 Shearman & Sterling, and I represent  
9 Mitsubishi Holdings Corporation.

10 A. Nice to see you again.

11 Q. You, too.

12 You recall testifying at a  
13 deposition on June 15th and June 28th?

14 A. Yes.

15 Q. You understand that you're  
16 still bound by the oath you gave at that  
17 deposition to tell the truth?

18 A. Of course.

19 Q. Did you read the transcript of  
20 either the first day or the second day of  
21 your testimony?

22 A. No.

23 Q. Since the second day of your  
24 deposition, have you discussed the  
25 deposition with your attorneys?

1 JENNIFER STONE FISCHMAN

2 A. Yes.

3 Q. How many times?

4 A. I couldn't say. I mean, we  
5 discussed it during the -- you know, we  
6 discussed it -- I can't discuss what we  
7 discussed; right?

8 MR. BERMAN: He's asking you  
9 how often. You can answer.

10 A. Oh. I don't know. Once or  
11 twice. I don't know. Once or twice.

12 Q. Okay. Have you discussed the  
13 deposition since June 28th with anybody  
14 other than your attorneys?

15 A. Just my husband.

16 Q. Okay. Let me start by putting  
17 in front of you three Exhibits, which are  
18 all documents that were produced after the  
19 first day of your deposition. The first  
20 Exhibit is marked Fischman 788 through  
21 Fischman 834, a collection of various  
22 documents, which we'll talk about. The  
23 second Exhibit is marked Fischman 835, a  
24 single page. And the third Exhibit is  
25 three pages marked Fischman 836 through

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2 Fischman 838. And the first two of those  
3 Exhibits were produced to us on June 25th,  
4 2021, and the third was produced on July  
5 16th, 2021.

6 MR. FORTINSKY: Frances, how  
7 are we proceeding with marking  
8 Exhibits under the circumstances with  
9 you not being present here? Is there  
10 a protocol that your firm generally  
11 follows under these circumstances?

12 THE REPORTER: You can just  
13 deem them marked and describe what  
14 they are on the record.

15 MR. FORTINSKY: Okay. I'm  
16 going to mark them in ink. Do you  
17 know what Exhibit number we're up to?  
18 Does anybody know what Exhibit number  
19 we're up to?

20 MR. VALLI: I want to say 28  
21 because 27 is the last thing in my  
22 notes.

23 MR. FORTINSKY: Okay. Well,  
24 why don't I -- I'll mark them  
25 Exhibits 30, 31 and 32.

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2 (Whereupon, Fischman 788  
3 through Fischman 834 was deemed  
4 marked as Exhibit 30 for  
5 Identification as of this date by the  
6 Reporter; Fischman 835 was deemed  
7 marked as Exhibit 31 for  
8 Identification as of this date by the  
9 Reporter; and Fischman 836 through  
10 Fischman 838 was deemed marked as  
11 Exhibit 32 for Identification.)

12 Q. Miss Fischman, do you recognize  
13 these three Exhibits to be the three sets  
14 of documents produced by your counsel  
15 subsequent to June 15th?

16 A. Yes, I do.

17 Q. These documents were not  
18 previously produced in the litigation?

19 A. No.

20 Q. Do you know why they weren't  
21 previously produced in the litigation? And  
22 if the answer is different for different  
23 documents, feel free to say so.

24 A. Okay. Exhibit -- what we'll  
25 talk about is 30 and 31 I had in my

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possession and didn't realize. Thought I had provided everything to counsel. I admit to being less than organized in my office. And, specifically, the documents 789 through 824 was a notebook that I had in -- I had it in a purse that was buried in my closet and didn't realize I had.

Q. How did you come to realize that you had it?

A. I went to use the purse and I discovered it.

Q. When did you go to use the purse?

A. Sometime in early spring this year.

Q. And what did you do then upon discovering you had this notebook in your purse?

A. I did a more thorough review of everything that I had in my possession and in my home office and in my bags at home, and I photocopied them and I sent them to my counsel.

Q. Tell me about that further

1 JENNIFER STONE FISCHMAN

2 review. What did that consist of?

3 A. I had a bunch of stacks of  
4 papers in my bedroom, and I went through  
5 all of the papers and asked if I had  
6 already provided those to counsel, and he  
7 said that he did not see them, so, I --  
8 again, like I said, I went through the  
9 different papers and I found a few  
10 additional documents that I have not  
11 previously produced.

12 Q. And were pages 824 through 834  
13 among those papers? I'm referring to the  
14 pages from Exhibit 30 marked --

15 A. Yeah, yeah. So, there were  
16 just a few more things that I found that,  
17 yeah, I had thought I had previously given  
18 to counsel and I realized that I had not.  
19 So, I was actually quite upset with the  
20 fact that I had thought that all of this  
21 was in an earlier production and realized  
22 that it was not. In fact, we -- I had  
23 talked to my counsel as if he already had  
24 it in possession.

25 MR. BERMAN: I counsel the

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2 witness not to reveal any privileged  
3 attorney-client communications, but  
4 if you're asked nonsubstantive  
5 questions, you may answer them.

6 Q. Had you looked in your home  
7 office when you initially did the review of  
8 documents that led to the earlier document  
9 productions in the case?

10 A. In my earlier review, I was  
11 focused on electronic documents, like all  
12 of the job applications and things like  
13 that, and, so, again, I admitted to not  
14 being fully, you know, my home office not  
15 being terribly well-organized, and, so,  
16 there was a folder of documents that did  
17 not get copied, you know, that is included  
18 in that Exhibit 30 and 31.

19 Q. Were any of the documents  
20 produced by you prior to June 15th from  
21 sources other than electronic data?

22 A. I can't really recall, but I  
23 think, yes, I had another file that was  
24 photocopied that I personally photocopied  
25 and that was produced.

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2 Q. And where had that been kept?

3 A. It had also been kept in my  
4 home office in a stack of papers.

5 Q. But was produced prior to June  
6 15th, 2021?

7 A. Yes.

8 Q. So, why was -- if you searched  
9 for documents in your home office prior to  
10 June 15th, why then did you not discover  
11 some documents but you did discover others?

12 A. It was -- other than that  
13 notebook, I knew about these documents and  
14 I thought I had photocopied them and  
15 provided them to counsel. So, the fact  
16 that one file was left uncopied by myself  
17 was a surprise to me --

18 Q. Okay.

19 A. -- and it was inadvertent.

20 Q. So, then, Exhibit 31, which is  
21 produced separately from Exhibit 30, where  
22 did you discover Exhibit 31 prior to  
23 producing it?

24 A. I'm sorry. That would have  
25 been produced at the same time. It was in

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2 the same folder.

3 Q. So, what you just testified to  
4 applies also to Exhibit 31?

5 A. Yeah.

6 Q. Why was Exhibit 31 produced  
7 separately from Exhibit 30?

8 A. I couldn't say. I didn't  
9 produce it.

10 Q. Okay. Exhibit 32 -- you told  
11 me that what you were just discussing  
12 applied to Exhibits 30 and 31. What about  
13 Exhibit 32? What prompted you to produce  
14 this information in the past month?

15 A. So, Exhibit 32 was your -- we  
16 got into the expenses and my income for  
17 2018, '19 and '20, and I explained to you  
18 that as an independent contractor I incur a  
19 great deal of expenses associated with the  
20 generation of my income as a real estate  
21 agent, and that they were not insubstantial  
22 expenses, and you asked me to give you a  
23 list. So, I had this list at home that I  
24 had given to my husband for tax purposes,  
25 and it explains in great detail the types

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of expenses that I incurred in those years.

Q. Okay. We'll come back to that.

A. Okay.

Q. Turning now to Exhibit 31.

A. Yes.

Q. Can you identify this document?

A. Yes. This is the --

MR. BERMAN: I object to form.

This is multiple documents. Do you  
want to specify pages?

MR. FORTINSKY: No. Exhibit 31  
is a single page, page 35.

A. This was the speech that Nick  
Oliva said to me upon my termination at  
approximately 9:30 in the morning on  
January 30th, 2017.

Q. So, presumably --

A. It's a copy of the speech.

Q. Okay. And presumably you're  
referring to the typewritten portion of  
Exhibit 31?

A. Yes.

Q. Not the handwritten portion?

A. The second paragraph, yes.

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2 Q. Right.

3 How did you originally obtain a  
4 copy of this document, this speech?

5 A. So, I believe that I was given  
6 this document shortly after my termination.  
7 As I was leaving on the 30th of January  
8 2017, I said to Pat Saunders, the H.R.  
9 director, that I wanted a copy of my  
10 personnel file, and it came via Fed Ex, I  
11 believe, just a few days after my  
12 termination, and I saw this document in  
13 that it was included at that time, and I  
14 jotted down these notes at that time within  
15 a couple of days.

16 Q. So, that would be in early  
17 February 2017?

18 A. Yeah.

19 Q. Why did you ask for the  
20 personnel file?

21 A. I asked for the personnel file  
22 because I knew that I had been an exemplary  
23 employee and I was preparing to question my  
24 termination.

25 Q. How?

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2 A. I wanted to get my personnel  
3 file in my possession because I wanted to  
4 get a copy of everything that had ever been  
5 said to me, about me.

6 Q. What do you mean when you say,  
7 I was preparing to question my termination?

8 A. Well, I believe that I was  
9 wrongfully terminated on the basis of  
10 gender discrimination and retaliation, so,  
11 I wanted a copy of my personnel file in  
12 case I decided to pursue legal action  
13 against Mitsubishi.

14 Q. What made you decide eventually  
15 to pursue legal action?

16 MR. BERMAN: Object to form.  
17 You can answer.

18 A. They -- what made me ultimately  
19 decide?

20 Q. I don't mean what were the  
21 grounds. We see the -- what your complaint  
22 says, but, I mean, what was it that made  
23 you -- that caused you to reach the  
24 decision to sue rather than not sue as of  
25 early February?

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2 MR. BERMAN: I'll object to  
3 form on the grounds that it seems  
4 that your question calls for mental  
5 impressions of an attorney. If you  
6 want to ask a factual question, I  
7 don't have any issue with that.

8 MR. FORTINSKY: I am intending  
9 for it just to be a factual question.

10 Q. As of early February, had you  
11 reached the decision to sue?

12 A. No.

13 Q. When did you reach the decision  
14 to sue?

15 A. I couldn't say when we sued.  
16 When we got the -- when we filed the EEOC,  
17 I guess. I don't know.

18 Q. So, what caused you to change  
19 from not being certain about your intention  
20 to sue as of February 2017 to becoming  
21 later certain that you intended to sue?

22 MR. BERMAN: Object to form.

23 A. I couldn't recall exactly what  
24 the steps were at that time, but I will  
25 tell you it was a pretty dark time for me,

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and I was number one focused on getting another job immediately. I immediately started working on my resume, and I immediately contacted every recruiter that I had contact with and I'm sure it was a combination of timing, and, you know, and the concern of, you know, I had been so wronged that, yeah, I was going to sue.

Q. Whose handwriting is on Exhibit 31?

A. That's my handwriting.

Q. All of it?

A. All of it.

Q. What does the word, never, on the upper right refer to?

A. That refers in direct response to the sentence next to it where Nick Oliva writes, I worked very hard to provide you with guidance and feedback to assist you in overcoming these deficiencies, and my response was, he never did that and there was never a need for it.

Q. Are you saying that you never got any guidance or feedback from Mr.

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Oliva?

A. I will say that I never got guidance and feedback from Mr. Oliva on poor communications and lack of judgment set forth in evaluations because there was no such occurrence of lack of judgment or poor communications.

Q. Would you agree that you did receive guidance and feedback from Mr. Oliva during the period he was your supervisor?

A. I would say that during the period that he was my supervisor we had many, many collegial conversations that were more of a dialogue than guidance, and, so, I would say that given the fact that I had eighteen years or nineteen years of experience and nine years working with the company, that most of our conversations were eye-to-eye, if you will, eye-to-eye.

Q. You didn't see those conversations as being guidance from a supervisor?

A. I'd have to ask which specific

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2 conversation you're recalling because  
3 you're asking very general questions.

4 Q. I'm asking about whether there  
5 was any conversation that you had with Mr.  
6 Oliva when he was your supervisor in which  
7 he gave you what you understood to be  
8 guidance or feedback on your work.

9 A. I can't recall ever having  
10 guidance or feedback on my work.

11 Q. Well, what about collegial  
12 conversations with him? Let's not call  
13 them guidance or feedback. Did you ever  
14 have collegial conversations with him in  
15 which he made suggestions to you as to how  
16 best to handle your work?

17 A. I can't really recall a  
18 specific occasion. He may have, but I  
19 can't recall a specific occasion where he  
20 gave me guidance on my work. Like I said,  
21 I think that we talked about strategy. I  
22 would update him frequently on a variety of  
23 matters, but I can't recall that he gave me  
24 guidance.

25 Q. You viewed all your

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2 communications with him as collegial rather  
3 than supervisor to employee?

4 A. No. I wouldn't say all. I'm  
5 just saying that, you know, if I reported  
6 something to him, then I was reporting to  
7 him as my supervisor. I definitely viewed  
8 him as my supervisor. I mean, no doubt.  
9 That's why I drove all over California when  
10 we did our last trip right the day before  
11 he fired me. I rented the car out of  
12 deference for him. I drove him out of  
13 deference. He was my supervisor. I didn't  
14 ask him a lot of questions about things  
15 that I wasn't involved in. I had a lot of  
16 deference for him.

17 Q. Okay. What was the purpose of  
18 writing these notes on Exhibit 31?

19 A. I just -- I wanted to get it  
20 down at around the same time of exactly  
21 what happened for my personal records.

22 Q. Did anyone ask you to write  
23 notes?

24 A. No.

25 Q. The next line beneath never, it

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2 says, no, and no A-U-T-H. Looks like 4/5  
3 meeting and 1/10 meeting J-T, can you --

4 A. Can I clarify? That is  
5 actually --

6 Q. Yeah. That's my question. If  
7 you could tell --

8 A. So, it's a little confusing  
9 because it says, no, with a small N and a  
10 small O, and then there is a line under it  
11 --

12 Q. Right.

13 A. -- and then it says, N-O, which  
14 is meant to be Nick Oliva. Auth means,  
15 A-U-T-H, he authorized 1/5 meeting, and  
16 then under that it says, 1/10 meeting J-T,  
17 and that is Johei Takimoto. That was  
18 referring to the meeting.

19 Q. Okay. And, just for the  
20 record, who is Johei Takimoto?

21 A. He was the business -- head of  
22 the business for the Genomatica litigation  
23 at Mitsubishi Chemical Corp.

24 Q. What was the 1/5 meeting that  
25 you referred to?

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A. As I think I explained in an earlier deposition on -- I had been out sick the first week of January of 2017, and I had asked to meet with Nick on the 3rd, I believe it was, by e-mail. I asked if Nick wanted to have a phone call about the Genomatica settlement offer that we had received, and his response was, no, let's just wait until you've come into the office. So, I returned to the office on the morning of the 5th, and I recall that specifically around 11:00, 11:15 on that morning I stood in Nick's doorway and we had a conversation about the settlement, and we had a conversation because Josh, who was our outside counsel, Josh Berman had written an e-mail that I had forwarded when I was home sick to Japan that, you know, 2.5 million in two installments would be good, and I did not believe that that was a good idea because that was about what we were asking for in the litigation. So, I went to talk to Nick about it. Nick's response was, why don't we come down to

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2 2.2, and I said, I don't think we need to  
3 come down that far. Why don't we go with  
4 2.3? And he agreed. And I then returned  
5 to my office, and later that afternoon I  
6 went home sick again. I did not come to  
7 the office again the next day because I was  
8 sick, and sometime on the following day or  
9 the morning after that I -- or sometime on  
10 the 6th or 7th I spoke to Josh Berman, and  
11 told him that we had authority to go ahead  
12 with the 2.3.

13 Q. Okay. And your testimony is  
14 that Mr. Oliva authorized that?

15 A. My testimony is that Mr. Oliva,  
16 my supervisor, who was authorized down to  
17 \$2,000,000 authorized it 100%.

18 Q. Orally?

19 A. 100% orally.

20 Q. Okay. If that's the case, why  
21 did you later apologize in a subsequent  
22 e-mail?

23 MR. BERMAN: Object to form.

24 A. To whom?

25 Q. To -- I think it was to one of

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2 the Japanese executives.

3 A. No. My apology, and I think  
4 you should probably reference the actual  
5 e-mail --

6 Q. Let me just see if we can get  
7 the e-mail to Mr. Timoiji, I believe.

8 A. Just for clarity, Timoiji Minima  
9 is -- was a low-level window person liaison  
10 in Mitsubishi Chemical Holdings Japan. He  
11 was not the client. Mitsubishi Chemical  
12 Corporation was the client. Johei Takimoto  
13 was the client. Johei Takimoto had  
14 provided Nick Oliva plenary authority in  
15 writing in November to settle this case.  
16 Nick had participated in a settlement  
17 conference in San Diego where he had  
18 already offered down to \$2,000,000. So,  
19 when I had the conversation in Nick's  
20 office that we ought to offer 2.3 and he  
21 agreed, I had no reason to question where  
22 that authority was coming from because I  
23 already knew he was authorized, so, I  
24 believed that that was an authorized offer.  
25 Three days later when Takimoto was visiting

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the New York office, Nick, Takimoto and myself sat in the small conference room in the New York office around a small round table where we discussed at great length the settlement offer, the strategy for settlement, the need for depositions and possibility of depositions, the need for preservation of documents in Japan. We had a lengthy conversation, and, at the end, Mr. Takimoto said, I agree 100% with your strategy, Jennifer, and left.

Q. My question is why you apologized to Mr. Timoiji.

A. So, I apologized to Mr. Timoiji Minima because I had in my illness forgotten to send a notice to this person at MCHJ to communicate to the rest of the team that we had gone forward with a 2.3 offer. It was more of a status update rather than seeking authority.

Q. You'd represented many clients at MCHA during your period there; right?

A. Yes.

Q. And you'd represented them in

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2 connection sometimes with various business  
3 disputes; correct?

4 A. Yes.

5 Q. And sometimes you would settle  
6 those disputes; right?

7 A. Yes. Certainly.

8 Q. Okay. Is it fair to say that  
9 it was common before settling any dispute  
10 to get authorization from your clients?

11 A. I had authorization from the  
12 client.

13 Q. My question is, is it fair to  
14 say that in settling disputes for your  
15 clients during your tenure at MCHA that it  
16 was standard to obtain authorization from  
17 the client of the offer or settlement  
18 proposal that you were going to make?

19 A. I would say that each case was  
20 completely different.

21 Q. So, you'd say it was not  
22 standard to obtain authorization from them?

23 A. I would say that you could  
24 often obtain authorization in advance up to  
25 a certain number, and then within that

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2 range given the time difference in Japan  
3 and the difficulty in communicating  
4 sometimes by phone that you could have  
5 authority down to a certain number to  
6 settle, and, yes, I would have had that  
7 authority to do so.

8 Q. So, you would agree then that  
9 it is standard to obtain authority from the  
10 client before making a settlement proposal?

11 A. I would say that it was  
12 standard for us in the legal department to  
13 obtain authority in order to proffer a  
14 settlement agreement, a settlement amount.

15 Q. And would you agree that it is  
16 normal to obtain that authority in writing?

17 A. Sometimes.

18 Q. Well, would you say it was  
19 normal to obtain the authority in writing?

20 A. Yeah. Okay.

21 Q. Can you think of any instance  
22 in which you did not obtain authority to  
23 settle in writing before making a  
24 settlement proposal?

25 A. Well, in this case, we had the

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2 written authority of Johei Takimoto from  
3 mid-November, so, there is your writing,  
4 so, you know...

5 Q. Let's put aside the Genomatica  
6 case. We know that's in the subject of  
7 discussion, but let's put that to the side.

8 A. Uh-hum.

9 Q. Can you think of any other  
10 instance in which you made a settlement  
11 proposal on behalf one of your clients at  
12 MCHA where you did not have written  
13 authority?

14 A. So, I think some of this might  
15 be privileged kinds of communications with  
16 those clients, but, in general, it would  
17 have been my practice.

18 Q. Let's turn now to Exhibit 32 --  
19 I'm sorry -- no. I want to stick with  
20 Exhibit 30. Let's just talk for the moment  
21 about page 788.

22 A. Okay.

23 Q. Can you identify this page?

24 A. Yes.

25 Q. What is it?

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2 A. This is a list of all of the  
3 companies that I supported during my tenure  
4 at -- well, actually, during my last year  
5 at Mitsubishi.

6 Q. Is all of the handwriting on  
7 this page yours?

8 A. Yes.

9 Q. And why did you create this  
10 document?

11 A. Well, I created a similar  
12 document, which would have included just my  
13 columns for Nick when he first arrived to  
14 show him the split of where -- what  
15 everybody was responsible for, but I  
16 probably created this, you know, just kind  
17 of in my mind to like set out, you know,  
18 who was responsible for what when I left.

19 Q. When you left what position?

20 A. Sorry. When I -- my ultimate  
21 responsibility upon my termination.

22 Q. When did you create this  
23 document?

24 A. Probably early February of --  
25 probably right after I left just to sort of

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2 see, like, how it all shook out.

3 Q. For what purpose did you create  
4 this document?

5 MR. BERMAN: Object to form.

6 In the sense that this does not  
7 reveal mental impressions of an  
8 attorney in anticipation of  
9 litigation, you can answer.

10 A. It's just a list of all of the  
11 companies that I supported, the companies  
12 that Catherine supported, and the companies  
13 that Andy supported during 2016 and 2017.  
14 It also shows that Nick was responsible for  
15 Genex Brazil. I don't recall the reason.

16 Q. Do you recall Mr. Oliva ever  
17 saying that after he became general counsel  
18 that he wanted to move from a client model  
19 to a practice group model within the  
20 litigation group at MCHA?

21 A. No, I don't recall that.

22 Q. Do you know what I mean by a  
23 client model to a practice group model?

24 A. Why don't you tell me?

25 Q. Let me ask the question a

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different way.

Do you recall Mr. Oliva ever saying that instead of assigning responsibilities within the legal group at MCHA to different lawyers on the basis of each lawyer representing certain affiliates within the Mitsubishi Enterprise, that instead he wanted to assign responsibility to the various lawyers within the MCHA legal group based on subject matter expertise?

A. I don't recall him ever saying that, no.

Q. You don't recall anything ever like that?

A. Not in 2016, no.

Q. Or ever?

A. But -- I don't recall his plans, no.

Q. Do you recall any discussions with him about whether the responsibilities for affiliates within the Mitsubishi Enterprise should be distributed more broadly rather than concentrated in a small

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2 number of attorneys?

3 A. I don't recall ever having  
4 conversations with Nick about his plans for  
5 the group, no.

6 Q. Do you ever recall any  
7 conversations with Mr. Oliva about sharing  
8 responsibility for any of the clients on  
9 the list on the left side of Exhibit 30  
10 under your name?

11 A. Yeah. I definitely had  
12 conversations with him about moving some of  
13 this business to Stephen Rose who was now a  
14 year at the company and doing a terrific  
15 job, and I had trained him, and there were  
16 some of these business that he and I worked  
17 with together on, and that eventually it  
18 would have made sense to transition to him.

19 Q. Tell me what you remember about  
20 that conversation, what you said, what Mr.  
21 Oliva said.

22 A. For example, My Tech Mexico, we  
23 were working on that together, but mostly  
24 Stephen was fluent in Spanish, and, so, it  
25 made sense for him to support them. Same

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2 with Philtech, and, possibly, MCPP Brazil.  
3 He probably would have transitioned to  
4 more, you know, more broad -- take on more  
5 responsibility as he grew in the role.

6 Q. How many conversations of this  
7 nature did you have with Mr. Oliva?

8 A. Oh, I can't say. No idea.  
9 Maybe one.

10 Q. And what was his message to you  
11 in that conversation?

12 A. I have no recollection of what  
13 his message -- you have to be more  
14 specific.

15 Q. Did he ever encourage you to  
16 give up your responsibility for any of the  
17 clients that you had responsibility for?

18 A. Encourage me to give up my  
19 responsibilities?

20 Q. In other words, to give up  
21 responsibilities to Mr. Rose or anyone else  
22 in the legal group.

23 A. Most times people are looking  
24 for people to take on more responsibilities  
25 rather than less responsibilities. So, you

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2 know, a lot of these companies I had been  
3 providing support to for many, many years.  
4 I had developed relationships with them and  
5 their presidents. There may have been --  
6 yeah. I can't recall him suggesting I give  
7 up any of these companies. Of course he  
8 was in charge of the allocation of work,  
9 so, if he didn't want me on one of these  
10 companies, I imagine he would have  
11 reassigned it.

12 Q. What does 22 of 31 on the left  
13 side mean?

14 A. That I was responsible for 22  
15 of the 31 operating companies.

16 Q. All right. Let's go now to a  
17 different page, pages -- let's go to page  
18 827 -- let's go to page 827. Do you  
19 recognize page 827?

20 A. Yeah.

21 Q. What is it?

22 A. It was a notation -- some notes  
23 I had taken after a call with a recruiter  
24 about a potential position, so, just to  
25 clarify, I found this on a notebook -- I'm

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sorry -- on a legal pad, and the next page, as well, that I found on an old legal pad, and I realized I had not submitted it with my job search material, and, so, I submitted it.

Q. Okay. So, these two pages relate to your job search I take it?

A. Yeah. Uh-hum.

Q. And this is all -- do these two notes all relate to the same single conversation with a recruiter?

A. No, no, no, not at all. I'm not even sure they are from the same -- I'm not even sure -- they're not from the same pad even, so, no, and the first page, that MLA, that would have been I think the name of the recruiter, but I'm not sure, but these would have related to jobs that I would have put on the listing that I did provide to you that I provided to New York State Department of Labor of potential jobs that I --

Q. Do you recall when these notes were made?

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2 A. I believe these were made  
3 around the spring of -- spring and summer  
4 of 2017.

5 Q. And is the same true for 828?

6 A. Yes.

7 Q. And these notes also relate to  
8 your job search I take it?

9 A. Yeah.

10 Q. For this first -- what is MLA?

11 A. That might have been the name  
12 of this company for Morgan Applied, but I  
13 can't recall.

14 Q. Did you -- what happened with  
15 your application?

16 A. It didn't go anywhere on this  
17 form. I probably had a phone interview,  
18 but I'd have to look back on -- I'd have to  
19 look back on the listing I gave you from --

20 Q. You had a phone interview with  
21 Morgan Applied?

22 A. I believe so.

23 Q. Okay. And then lower down it  
24 says, Kathy Lueders. Who is she?

25 A. I can't recall at this time.

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2 Q. Do the notes at the bottom of  
3 the page beneath her name relate to the  
4 same company as the notes at the top of the  
5 page where it says, Morgan Applied?

6 A. I don't believe that they're  
7 the same company. I believe this was two  
8 separate discussions.

9 Q. And what happened with this  
10 application?

11 A. I didn't -- I didn't get the  
12 job.

13 Q. Did you pursue it?

14 A. I pursued everything.

15 Q. Did you interview for that job?

16 A. I did not interview in person  
17 for that job.

18 Q. Did you interview on the phone?

19 A. I may have had a phone  
20 interview.

21 Q. How about CBRE, looking to the  
22 next page?

23 A. Yeah. Yes. I interviewed for  
24 CBRE.

25 Q. And what happened with that?

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2 A. I did not get the job.

3 Q. Did you interview in person?

4 A. Yes.

5 Q. And then Nancy Westphal GC

6 Global Workplace Solutions; is that a

7 separate institution or --

8 A. No.

9 Q. -- does that relate to the same

10 --

11 A. She's the GC at CBRE.

12 Q. And Nora Davis, this whole page

13 relates to CBRE?

14 A. Yes.

15 Q. Were any of these three

16 positions outside of the New York area?

17 A. I don't think so, no. I think

18 that they may have included travel, but

19 they were all within the New York area.

20 Q. Were you asked at any of these

21 interviews why you left MCHA?

22 A. I was always asked why I left

23 MCHA.

24 Q. Did you have a regular answer

25 to that question?

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A. I did, and I explained it to you earlier in our previous deposition.

Q. Just to refresh me, what was your answer to that?

A. It was along the lines of there was a new general counsel and he was taking the group in a different direction and we parted amicably, something to those -- along those lines. I tried to spin it, but it was challenging because, obviously, it wasn't amicable and it wasn't a parting of ways amicably.

Q. Turning back to page 789.

A. Okay.

Q. I think you said that pages 789 through 824 all came from your notebook.

A. Yes.

Q. Were there any pages that were in the notebook that were not produced, for example, because of privileged concerns or otherwise?

A. No. I think there is one page at the end that I didn't copy because it didn't seem to relate to anything involved

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2 in this lawsuit. It was just notes from a  
3 meeting that I had in Japan just before my  
4 demotion during that compliance trip, and  
5 it related to their compliance materials  
6 for something, so, I didn't copy it, but  
7 everything else is here.

8 Q. Was that page privileged?

9 A. No.

10 MR. FORTINSKY: We would call  
11 for the production of that page.

12 \*

13  
14 A. You can still see it when you  
15 review. I probably should have photocopied  
16 that, too.

17 Q. Okay. Pages 789 through 824,  
18 were these notes that you took during  
19 conversations with people at MCHA?

20 A. So, I had a practice of never  
21 walking into a room for a meeting, or, you  
22 know, I had a practice that I primarily  
23 used which was I primarily took notes in  
24 meetings on legal pads, legal pads which I  
25 left in my office at Mitsubishi on the day

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that I was locked out the door by Pat Saunders. Probably two stacks about a foot tall each of my notes of conversations that I had with a variety of people during my tenure there, all of which we've asked for and I haven't seen. For the transition to become acting general counsel, Donna stressed to me that it was super secret and no one could know about this between December 3rd and mid-February when it was going to be announced. So, I went out and I bought a small notebook with my own money that would fit in my purse, and I would keep it with me so that if I left a legal pad on my desk that said, you know, that I'm transitioning, nobody would see it because it would be on my person and it would be almost pocket size, almost a little bigger than pocket size, like purse size, and it had a cover, so, that's why this notebook is different than the legal pads that I traditionally left in my office. So, yeah, I bought this for those conversations to have with Donna during

1 JENNIFER STONE FISCHMAN

2 that transition period, and I primarily  
3 used it during that transition period.

4 Q. Are any of the conversations  
5 recorded on pages 789 through 824 with  
6 people other than Donna Costa?

7 A. Yeah. There might be some  
8 notes from other meetings with other  
9 people. Like I think I have notes from a  
10 meeting with Pat. I think I have notes  
11 from a meeting with Andrew Sazar.

12 Q. Okay. Well, we'll go through  
13 it and then you can tell me as we go  
14 through.

15 A. And I didn't always date the  
16 notes, so, it is what it is, what you're  
17 seeing.

18 Q. You referred to data dumps in  
19 your testimony earlier.

20 A. Yeah.

21 Q. Were the meetings that these  
22 notes reflect the data dumps that you were  
23 earlier referring to?

24 A. Yes.

25 Q. In the upper left corner of

1 JENNIFER STONE FISCHMAN

2 789, you see the word trust?

3 A. Uh-hum.

4 Q. What does that refer to?

5 A. Building trust within the legal  
6 department between -- I was going to be  
7 taking on a new role, and it was important  
8 to create trust between me and the other  
9 attorneys working in the legal department  
10 at MCHJ.

11 Q. Why was that important?

12 A. I think because I was being  
13 elevated from a position of their colleague  
14 to a position of supervisor, and that  
15 establishing that trust early on with them  
16 that I wasn't going to be changing things,  
17 that their roles would be substantially the  
18 same, that would keep them more  
19 comfortable.

20 Q. Okay. The second bullet on 789  
21 says, Donna deleting all communication, et  
22 cetera. Do you see that?

23 A. Yeah.

24 Q. Do you recall what that note  
25 was intended to reflect?

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2 A. Yeah. Donna, one of the first  
3 things she told me when I met with her on  
4 that day was that she was wiping her  
5 computer clean, which surprised me, but I  
6 didn't -- I just wrote it down. She's  
7 deleting all her communication between her  
8 and the legal department and herself  
9 because she was taking on the role now as  
10 president, and, therefore, she was no  
11 longer holding onto those communications.

12 Q. You see at the bottom of that  
13 page it says, monthly update to Japan,  
14 report activities of department by first of  
15 each month?

16 A. Yes.

17 Q. What does that refer to?

18 A. She had said that the -- that I  
19 should provide four or five bulletpoints on  
20 the general activities of our legal  
21 department to Sakaguchi on a monthly basis.  
22 This is like high level, you know, stuff of  
23 what we're all working on.

24 Q. And did you, in fact, do that?

25 A. I'll have to look further

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2 because we had another conversation about  
3 those reports later on, and, so, I did  
4 report to Sakaguchi on a monthly and  
5 quarterly basis, I believe.

6 Q. So, you did have some  
7 communications with legal personnel in  
8 Japan; is that fair to say?

9 A. Yeah. I mean, it was a report  
10 of four to five bulletpoints in an e-mail.

11 Q. Okay.

12 A. Yeah. I actually described it  
13 on the next page.

14 Q. And then on page 791 it says in  
15 underline with an arrow next to it it says,  
16 establish regular communication with  
17 Sakaguchi. Do you see that?

18 A. Yeah.

19 Q. Did you, in fact, establish  
20 regular communication with Sakaguchi?

21 A. Well, I think I may have  
22 attempted to, because if you read on after  
23 that it says, Donna's offered weekly,  
24 monthly, oral, written and big issue  
25 reports and he's rejected all of it. So,

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he suggested I seek a way to communicate with him, and, you know, I probably tried to get in there with a monthly bullet report, but it was clear, you know, nobody was inviting me to Japan to get to know each other better.

Q. And then at the bottom of 791, you see where it says, I-M-P-T, and the language that follows?

A. Yes.

Q. Do you recall the conversation that that refers to?

A. Yeah. During this conversation where Donna said that she was going to maintain all her relationships with Japan, that they don't really want to interact with me and just send the report.

Q. Did she tell you why -- did she tell you who didn't want to interact with you?

A. Well, I assumed it was Ken Fujiwara and Sakaguchi who was the head of all legal --

Q. Did she tell you who it was

1 JENNIFER STONE FISCHMAN

2 that didn't want to interact with you?

3 A. No. She just said Japan. And  
4 that was -- we frequently referred to Japan  
5 being, you know, MCHC, MCHJ, MCC, et  
6 cetera. I would have understood her to  
7 mean, you know, Ken Sakaguchi, this other  
8 high level executive that she had  
9 interacted with, but that they did not want  
10 to interact with me.

11 Q. Did she tell you why they  
12 didn't want to interact with you?

13 A. No, she did not, and I wasn't  
14 -- I wasn't really in the -- I didn't  
15 question her. I just accepted it.

16 Q. Did you expect over time you  
17 would grow into the new role of acting  
18 general counsel or perhaps eventually  
19 general counsel?

20 A. Well, I was concerned that I  
21 was chosen as acting right off the bat.  
22 And I believe that I raised it in the very  
23 first meeting and in multiple meetings  
24 right up until my demotion that no one had  
25 ever been acting of anything, and I felt

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really concerned that this was, you know, some kind of placeholder position, or, you know, it just felt like, you know, Japan doesn't want to deal with me, which is weird, and, you know, we had -- it just felt like I should have been the full general counsel from day one. I had so much experience. I had so -- I had added so much value to this company over nine years, I mean, so much, and it felt like I really -- I didn't know what they meant by, grow into it, and, frankly, Donna never said, if you grow into it. In fact, she just said the opposite to me. Contrary to what she has said or testified, she did not -- she never said to me, you can grow into it, here are the steps. Never. It was, I'm not sure this is ever going to happen for you. Are you sure you want this job? It was very -- and I believed in my soul that I was going to see this job because I had been working for it for nearly twenty years.

Q. Did it seem to you at the time

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2 of this conversation about who you would  
3 interact with that Japan, whatever that  
4 meant, wanted to interact with Donna Costa  
5 instead of you?

6 A. I couldn't say. I don't know  
7 what the basis for why they didn't want to  
8 interact with me. I had interactions with  
9 plenty of people in Japan up until this  
10 point. I met Sakaguchi's son a few times.  
11 I had worked with Takimoto on multiple  
12 projects. I had worked for other direct  
13 Japanese clients over many years.

14 Q. Did the extent that they were  
15 not going to get information from or  
16 interact with you, where were they going to  
17 get that information or who would they be  
18 having those interactions with?

19 A. I guess they were going to have  
20 them with Donna.

21 Q. Another woman?

22 A. The only other woman ever in  
23 the corporation worldwide.

24 Q. Did you consider saying you  
25 didn't want the job of acting general

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counsel?

A. No. Never.

Q. Because you wanted it?

A. Yeah. Well, let me rephrase that and clarify. I wanted the job as general counsel. That had been what I had had been working for for my entire career, and I had been working towards that at Mitsubishi and I wanted that job, yeah.

Q. But given the alternative of taking the job of acting general counsel or not taking the job of acting general counsel, you preferred to take the job of acting general counsel; right?

A. Yes, because it was a substantial raise over what I was making and I wanted that position.

Q. Okay.

MR. BERMAN: Can I take a break now, counsel?

MR. FORTINSKY: If you want a break, we can take a break.

THE WITNESS: Okay. I --

MR. BERMAN: Is now a good

1 JENNIFER STONE FISCHMAN

2 time?

3 MR. FORTINSKY: Yeah, it's a  
4 fine time.

5 THE VIDEOGRAPHER: The time is  
6 12:30 P.M. and we are off the record.

7 (Whereupon, a short recess was  
8 taken.)

9 THE VIDEOGRAPHER: The time is  
10 1:00 P.M. and we're back on the  
11 record.

12 Q. Okay. We're back. I want to  
13 just follow-up on one thing we discussed  
14 before the break, a while before the break.  
15 You told me that you had -- when we looked  
16 at Exhibit 31, which is the script with  
17 your handwritten notes, you told me that  
18 that was part of a personnel file that you  
19 got from the company; right?

20 A. (No response.)

21 Q. What did you do with the  
22 personnel file when you got it?

23 A. Nothing.

24 Q. Did you make copies of the  
25 personnel file?

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2 A. Yes.

3 Q. When?

4 A. Probably when I first met with  
5 my original counsel.

6 Q. When was that?

7 A. I don't recall the date. Early  
8 -- that would have been in the spring of  
9 2017, I believe.

10 Q. Okay. So, when you marked on  
11 Exhibit 31 with your handwriting, was that  
12 on the original version of the personnel  
13 file, the original one that you received?

14 A. It would have been on a copy  
15 that I received from the company.

16 Q. That's what I mean. So, you  
17 received a copy from the company. Is that  
18 the version that you recorded your  
19 handwritten notes on?

20 A. Yes.

21 Q. And did you make copies after  
22 or before you made the handwritten notes?

23 A. I don't recall.

24 Q. Well, you told me that you made  
25 the handwritten notes within a few days of

1 JENNIFER STONE FISCHMAN

2 receiving it. I think that's what you  
3 said; right?

4 A. Yes.

5 Q. And, so, when you made -- how  
6 long after that did you speak to your  
7 attorney from the unemployment matter?

8 A. I said I don't recall how early  
9 on I spoke with him. Probably sometime in  
10 February.

11 Q. Did you keep a clean copy of  
12 the personnel file?

13 A. Yes. I may have. I don't  
14 recall.

15 Q. You don't recall?

16 A. No.

17 MR. FORTINSKY: Okay. I'll now  
18 mark as Exhibit 33 -- I think it's  
19 33. I'll now mark as Exhibit 33 a  
20 four-page document beginning on the  
21 letterhead of the first page of which  
22 has the letterhead State of New York  
23 Unemployment Insurance Appeal Board,  
24 page number Fischman 411 through 414.  
25 Let me just write on that.

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(Whereupon, Fischman 411  
through 414 was deemed marked as  
Exhibit 33 for Identification as of  
this date by the Reporter.)

Q. Turning to page -- well, do you  
recognize the document, Ms. Fischman?

A. This looks like a document that  
I received or that was produced by the  
Unemployment Insurance Appeal Board.

Q. Okay. And do you recognize the  
document attached as Fischman 414?

A. Yes.

Q. Do you know how the  
Unemployment Board obtained this document?

A. Yes. They must have received  
it from the company directly.

Q. And why do you say that?

A. Because I don't believe I ever  
provided any documents to them.

Q. Okay. All right. Let's turn  
now to page --

A. Do you need a copy of this  
back, or is this my copy?

Q. Well, I guess that will be the

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2 marked copy.

3 A. You've marked it?

4 Q. Yeah. I did the same with the  
5 other Exhibits.

6 A. Okay.

7 Q. That's in lieu of the Court  
8 Reporter marking --

9 A. Okay.

10 Q. Now, let's turn to page 804 of  
11 the notebook --

12 A. Okay.

13 Q. -- Fischman 804. And this page  
14 appears to be still part of your notes from  
15 a meeting with Donna Costa --

16 A. Uh-hum.

17 Q. -- on -- let me see what the  
18 date was. I think it was from January 7th,  
19 2015?

20 A. I don't know.

21 Q. But, in any event, this is from  
22 your meeting with Donna Costa?

23 A. Let's just agree it was from  
24 some meeting with Donna Costa. I couldn't  
25 say when I wrote these notes.

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2 Q. Okay. That's fair. Do you see  
3 near the bottom of the page it says, really  
4 I-M-P-T relationship?

5 A. Uh-hum.

6 Q. Do you know which relationship  
7 that was referring to?

8 A. It looked like there was a new  
9 president coming into MKIC.

10 Q. And, for the record, what is  
11 MKIC?

12 A. Mitsubishi Kagaku Imaging Corp.  
13 located in both Glendale, California and  
14 Virginia.

15 Q. And was that one of the clients  
16 that MCHA served or the affiliates that  
17 served that was one of MCHA's clients?

18 A. Yes.

19 Q. And then you see to the right  
20 of the words we just looked at it says,  
21 important relationship to build to create  
22 trust and understanding?

23 A. Uh-hum.

24 Q. Was that -- do you have an  
25 understanding as to what create trust and

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2 understanding refers to, that is, trust and  
3 understanding between whom?

4 A. Yeah. I mean, this looks kind  
5 of -- we use those words, create trust and  
6 understanding, because the folks coming  
7 over from Japan are not used to working  
8 with Americans, and we used that  
9 terminology very frequently to kind of  
10 explain how we worked with them. So, when  
11 I would have a meeting with a Japanese  
12 business person, I always spoke very  
13 slowly, which is hard for a New Yorker to  
14 do. So, I tried to measure my tone and my  
15 communications style to adjust to their  
16 understanding of English, because it's a  
17 very hard language, and often their English  
18 wasn't very good, but they frequently  
19 brought people with them because English  
20 was better so that I would be speaking  
21 maybe to the president, but also his  
22 director of finance, and I would make sure  
23 that I speak clearly and slowly in order to  
24 develop a dialogue and impressed upon them  
25 my understanding of their business. So,

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1  
2 MKIC, for example, was a business that made  
3 toner products, and I had been supporting  
4 the toner ink cartridges. I had been  
5 supporting them for many years through  
6 their acquisition of Future Graphics and  
7 beyond, and I was now going to support them  
8 -- they had -- it was a tough business,  
9 toner ink cartridges, and I was going to be  
10 assisting them in their reduction in force.  
11 And, so, if I was going to meet with the  
12 new sales and marketing president, I would  
13 make sure that I was empathetic to the new  
14 position that he was in, which he was going  
15 to come in and reduce the force, that's a  
16 tough job to do, especially for people who  
17 had been working there for more than twenty  
18 or some odd years. So, if I were going to  
19 meet with him, I would make sure that I  
20 explained I understood his situation, I  
21 understood the business. I've been to  
22 their manufacturing sites many, many times.  
23 I knew many of their employees, and I had  
24 had been providing them support for many  
25 years, and that I was there to help him

1 JENNIFER STONE FISCHMAN

2 through this process.

3 Q. Do you think that building  
4 trust with the legal department's clients  
5 is an important part of the general counsel  
6 role?

7 A. Yes.

8 Q. On page 807, you see where it  
9 says, first sit down reassuring status quo?

10 A. Yeah.

11 Q. This is part of Donna Costa's  
12 guidance to you; is that correct?

13 A. This was the first sit-down  
14 with the other members of the legal  
15 department. She was suggesting how to  
16 communicate with them to show stability and  
17 focus on them.

18 Q. And she thought it was  
19 important to be reassuring, respectful,  
20 calm and cool?

21 A. Exactly.

22 Q. Did you agree with that?

23 A. Yes, of course I did.

24 Q. Let's turn to 817. You see --  
25 is this still part of the meeting or some

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2 meeting between you and Donna Costa?

3 A. Yeah. This would have been  
4 probably at a later time and date because  
5 -- I don't know if there is a date.

6 Q. Okay. That's not important for  
7 the moment.

8 A. It's in different ink. It's  
9 probably at a different time.

10 Q. You see where it says, yet to  
11 be familiar with executive officers, board  
12 members?

13 A. Uh-hum.

14 Q. So, was this part of Donna  
15 Costa's advice to you?

16 A. Yeah. I remember she said  
17 something to the extent of look on their  
18 website and make sure you look at the name  
19 of the board members.

20 Q. And this is part of her  
21 guidance to you as to how to be successful  
22 in the role?

23 A. This is her guidance of making  
24 sure I knew the names of the executive  
25 officers.

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2 Q. So you could be successful in  
3 the role; right?

4 A. Yes.

5 Q. On -- and just below that it  
6 says, send Ken and Sakaguchi notes of their  
7 promotions. Do you know what that means?

8 A. Yes. I think we've even seen  
9 those e-mails that I sent to Ken and  
10 Sakaguchi when they were promoted in April  
11 of 2015. Donna suggested that I -- I  
12 didn't know they were promoted because I  
13 wasn't included in that announcement, even  
14 though I was, you know, an officer at the  
15 time, but she told me that they got  
16 promoted, so, I sent them both  
17 congratulatory notes.

18 Q. Based on advice from Donna  
19 Costa?

20 A. Based on her knowing that they  
21 actually got promoted and her advising me  
22 that it would be a nice thing to send them  
23 a note.

24 Q. Because that would help you  
25 succeed in the role?

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2 A. I assume it was to help me  
3 succeed, but yeah.

4 Q. On page 818, you see it says,  
5 as part of my learning, looking at things  
6 more critically and quantitatively, do you  
7 know what that means?

8 A. Yeah. I guess Jordan was a  
9 member of the legal department and he had  
10 mentioned to Donna that he was interested  
11 in metrics and he was very interested in  
12 measuring and quantifying work product.  
13 So, I wrote down that I would also be  
14 interested in being more critical and  
15 looking at things more quantitatively than  
16 we had in the past done so. I thought  
17 actually that was the direction that the  
18 legal department was going in, legal  
19 departments in general, and that had been  
20 my experience actually at Raytheon in my  
21 prior role that we measured things more --  
22 our time spent on matters more  
23 quantitatively, and, also, back at Raytheon  
24 we had like a central database of all of  
25 our matters and all of our documents, and

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1 at Mitsubishi we didn't have -- excuse me  
2 -- at MCHA we didn't have any kind of  
3 database or schedule, calendar that we put  
4 matters on so that no one really knew what  
5 anybody else was working on, and, also,  
6 their documents were all on their own hard  
7 drive of their computer, so, if their  
8 computer failed we would lose a ton of  
9 records. So, during the time that I was  
10 acting G.C., we were actually starting to  
11 look at going into database or at least a  
12 server base collection, and, in fact, we  
13 transitioned to a very low budget product  
14 called All Docs during that period of time.

16 Q. So, this idea of looking at  
17 things more critically and quantitatively,  
18 was that your observation, or was that  
19 Donna's advice or both?

20 A. I think it was really Jordan  
21 had raised it with Donna. She didn't get  
22 to it or didn't have interest in it. I  
23 said that -- I probably was more interested  
24 in it, and that I probably asked her, you  
25 know, how to speak to him about it in a way

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2 that made him feel like he, you know,  
3 originated the idea.

4 Q. On page 819, you see in the  
5 middle of the line it says, keep reading  
6 and reading our policies, try and remember  
7 they're not self-evident to business  
8 people?

9 A. Yes.

10 Q. What does that mean?

11 A. So, over the years I had worked  
12 with Donna, she and I had worked together  
13 on all of our internal business -- I'm  
14 sorry -- ethics and compliance policies,  
15 and, you know, our code of conduct, and as  
16 a part of becoming the chief compliance  
17 officer she made it clear that I needed to  
18 really own every one of those policies,  
19 whether or not they were written ten years  
20 earlier or even updated by me two years  
21 earlier, that they were now all my  
22 responsibility, not, you know, so, it was  
23 keep reading and rereading those policies  
24 and look at them with a different eye than  
25 I had looked at them prior or look at them

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2 with a new -- just try to look at it from  
3 different perspectives, you know, through,  
4 you know, different lights.

5 Q. Had Donna given you this advice  
6 before you became assistant general counsel  
7 -- sorry -- before you were named to be  
8 acting general counsel?

9 A. She might have been. She might  
10 have told me that earlier when we did the  
11 last mark-up of the code of conduct. It  
12 was just a refresher I think.

13 Q. And she gave you this advice  
14 again now?

15 A. Yeah.

16 Q. And that was because she wanted  
17 you to succeed in the role?

18 MR. BERMAN: Object to form.

19 Q. Is that right?

20 A. I couldn't say why she -- you  
21 know, you've asked me that a few times  
22 because I think you're trying to establish  
23 something here that she was so -- that she  
24 was trying to help me succeed in the role.  
25 Let me clarify my answers to you. I can't

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2 say why Donna gave me these notes or  
3 downloaded all of this data. She would of  
4 course want me to succeed in holding this  
5 role together while she transitioned to a  
6 big new job. Okay. Somebody had to do  
7 this. I was doing it. I wanted to be  
8 successful in this role. Okay. So, when  
9 you say, did she give this to you because  
10 she wanted you to be successful? I don't  
11 know. I think I wanted to be successful in  
12 this role. I don't think she cared whether  
13 I was successful or not in this role.

14 Q. Okay. Page 830 -- let's just  
15 pause on page 826 first. What were the  
16 circumstances of -- first, do you recognize  
17 page 826?

18 A. Yeah. It's actually 825 and  
19 826. 825 being a copy of the envelope --

20 Q. Yeah.

21 A. -- and 826 being a copy of a  
22 letter that I received from Marasasan, who  
23 was the mother of Kanako who had worked in  
24 our office for several years as a legal  
25 assistant, and I had become good -- close

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2 with her, and Kanako developed cancer and

3 --

4 Q. Sorry.

5 A. -- and she passed away right  
6 after she had a baby in 2016, and I was  
7 really, really -- I can't believe I'm --  
8 sorry -- emotionally --

9 Q. It's okay. Do you want to  
10 pause?

11 A. It's an emotionally charged  
12 day. I don't want to pause. I'm fine.

13 But she just had a baby and she  
14 had wanted to be married and wanted to have  
15 a baby for so long, and it was just the  
16 most heartbreaking situation that I had  
17 ever, ever experienced to that date, and I  
18 wrote to her mother to express my  
19 condolences and sadness and connection  
20 really to her beautiful daughter and wanted  
21 her to know that halfway around the world  
22 that I was still thinking about her, and I  
23 still think of her often. I'm sorry.

24 Q. It's okay. It's a tragedy.

25 A. Yeah.

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2 Q. On page 830, do you recognize  
3 these notes?

4 A. I do.

5 Q. Page 830 and 831?

6 A. Yes.

7 Q. When were they created?

8 A. On March 1st, 2016.

9 Q. And what were the  
10 circumstances?

11 A. The circumstances were that I  
12 had met with Nick earlier in the day after  
13 returning from a vacation, and we had had a  
14 discussion that I was very worried about,  
15 and, so, for the first time in my life I  
16 documented this discussion because it was  
17 so far afield of the type of work that I'd  
18 been asked to do prior that I wanted to  
19 document it.

20 Q. What do you mean by far afield?

21 A. I felt that Nick was asking me  
22 to create a false narrative to support a  
23 company that was doing something wrong.

24 Q. What did you think the company  
25 was doing wrong?

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2 A. They were terminating an  
3 employee who had been with the company for  
4 more than twenty years after she had  
5 already given her resignation notice.  
6 Remember when I talked to you earlier about  
7 MKIC and them having a reduction in force?

8 Q. Uh-hum.

9 A. So, this is roughly a year  
10 after those first notes were taken, right,  
11 so, this is 2016 and those notes were taken  
12 in early 2015. So, there had been a couple  
13 of waves of reduction in force, and my  
14 understanding was that the employees were  
15 told that if they would leave the company  
16 voluntarily they would be provided with a  
17 very good severance package based on your  
18 years of service, and I helped prepare  
19 those severance documents and those  
20 agreements for the company, and Amber Todd  
21 was an employee of MKIC, as was her  
22 husband, Dan Todd, both of them long-term  
23 employees who had moved to Glendale from  
24 the Virginia manufacturing plant several  
25 years earlier to help establish the

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1 California office. Dan Todd left the  
2 company in October of 2015 and received a  
3 very nice -- well, he received the  
4 severance package that had been offered at  
5 that time for all employees. Dan went to a  
6 customer of MKIC, which helped create a  
7 pipeline of product for MKIC, so, he was  
8 actually now the customer, working for the  
9 customer of the company, and he had been  
10 working there for some time when Amber Todd  
11 in, I believe, February, early February of  
12 2016, Amber went to Yvonne Bienemi, the  
13 H.R. manager at MKIC, and said that she was  
14 interested in now taking her severance  
15 package, staying as long as the company  
16 needed her to stay to help train any  
17 replacement or backfill, if necessary, but  
18 that she was now ready to leave the  
19 company, and Yvonne at the time contacted  
20 me and told me that the company didn't want  
21 to pay her a severance package as they had  
22 done her husband and other employees, and I  
23 said that you have to treat all employees  
24 equally, and during the middle of this I  
25

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1 had told Yvonne that, no, it would be  
2 inappropriate to treat her differently and  
3 that was how I left it with her. Then I  
4 went away on vacation in February for  
5 President's week, I suppose it was  
6 President's week, and on or around March  
7 1st, for sure it was March 1st, I came back  
8 and Nick came into my office and told me  
9 that while I was away he had had  
10 discussions with Takayamasan and Donna and  
11 that they had made a separate decision to  
12 terminate Amber, and I was surprised, and I  
13 said why would you -- why would they do  
14 that when they have offered a severance  
15 package, and they said, well, now there is  
16 a conflict. I said there is no conflict.  
17 There's never been a conflict. They're  
18 manufacturing a reason to get rid of her  
19 and treat her differently, and he said that  
20 it was our job in the legal department to  
21 help spin a narrative in order to protect  
22 the company from any potential liability,  
23 and I vehemently disagreed and told him  
24 that that was discriminatory, and he  
25

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2 immediately changed the subject and walked  
3 -- sort of stormed out of my office and  
4 refused to discuss it further. So, I went  
5 home and I wrote this letter to myself  
6 because I had never been asked to do  
7 something like that. It was antithetical  
8 to everything I believe.

9 Q. And what did you intend to do  
10 with these notes when you wrote them?

11 MR. BERMAN: Object to form.

12 To the extent that it doesn't call  
13 for the mental impressions of an  
14 attorney representing herself, you  
15 can answer.

16 A. I took these notes. I folded  
17 them up and I stuffed them in the back of  
18 my desk hoping to never see them again. It  
19 was a cleansing for me, and that's where  
20 they laid for the next several years.

21 Q. The reduction in force at MKIC  
22 in 2015 included both men and women; right?

23 A. It had to because we did it  
24 according to, you know, the EEOC  
25 guidelines.

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2 Q. And the people that were laid  
3 off at the time received a severance  
4 package; right?

5 A. You know, you'd have to go back  
6 and -- we'd have to go back and refresh  
7 what exactly they received and what the  
8 actual offers were.

9 Q. Well, you testified just a  
10 moment ago --

11 A. Well, yes, my belief is that  
12 they received severance packages based on  
13 their years of service.

14 Q. And both men and women received  
15 those severance packages; right?

16 A. I don't know the number of men  
17 and women who received them, but I'm sure  
18 that there were some women included. There  
19 were more men at the company than there  
20 were women, so, it would have been the  
21 majority men.

22 Q. So, whatever was done with  
23 Amber Todd was not based on the fact that  
24 this benefit that was provided -- this  
25 severance benefit that was provided was

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2 being provided only to men and not to  
3 women; correct?

4 A. Well, actually, it's my belief  
5 that it was provided to men right up until  
6 she left, so, you'd have to ask MKIC if  
7 they provided any other women with a  
8 severance package during that time period.  
9 My belief at the time that I wrote this was  
10 that Amber was being treated differently  
11 than other men who had left since that  
12 reduction in force which was a rolling  
13 occurrence.

14 Q. But throughout 2015, both men  
15 and women received severance packages when  
16 they were asked to leave; correct?

17 A. In 2015 I believe that there  
18 were some women included in this severance  
19 package distribution.

20 Q. Okay.

21 A. Because, as lawyers for the  
22 company, we advised them to treat them  
23 equally.

24 Q. Right.

25 So, when Dan Todd left, he left

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2 as part of a large scale reduction in  
3 force; correct?

4 MR. BERMAN: Object to form.

5 A. I'm not sure he left as a large  
6 scale reduction in force. I'd have to go  
7 back to look at the timing. I believe he  
8 left on his own somewhere after the large  
9 scale reduction in force. Remember, the  
10 reduction in force was primarily in  
11 Virginia and he was separate. He was over  
12 in California. So, if you could produce to  
13 me the reduction in force numbers, I can  
14 answer that more accurately. My impression  
15 was that he left and that she was being  
16 treated differently.

17 Q. He accepted an offer that was  
18 made on a large scale to a significant  
19 number of employees; correct?

20 MR. BERMAN: Object to form.

21 A. I believe that the entire  
22 company was offered the same deal, same as  
23 Amber, and I believe the understanding was  
24 you could exercise that within any time  
25 period.

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2 Q. What's your basis for saying  
3 that?

4 A. I believe that that is what the  
5 offer was.

6 Q. Ad infinitum? Forever?

7 A. I believe that that was what  
8 the offer was.

9 Q. As you sit here today, are you  
10 aware of any employee from MKIC that was  
11 terminated pursuant to the reduction in  
12 force on or after March 2016 other than  
13 Amber Todd?

14 A. No.

15 Q. Did MKIC or the Mitsubishi  
16 organization generally have a policy  
17 concerning conflict of interest that was in  
18 force in 2016?

19 MR. BERMAN: Object to form.

20 A. Not that I'm aware of, no.

21 Q. Was there any policy concerning  
22 doing business with relatives of the people  
23 who worked for the company?

24 A. Not that I'm aware of, no.

25 Q. Let's look at page 833.

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2 Do you recognize this document?

3 A. Yes.

4 Q. Do you remember the  
5 circumstances that gave rise to this  
6 exchange of e-mails?

7 A. I do.

8 Q. What happened?

9 A. This is when -- we were trying  
10 to -- so, when you do business in foreign  
11 countries, you frequently need to have  
12 documents authenticated either at the  
13 consulate or the courts, and there are  
14 companies that do that kind of work and  
15 come to pick up the document from you and  
16 then will take it to the consulate, have it  
17 authenticated, stamped, bring it back to  
18 you like a messenger service, it's a  
19 specific type of messenger, and this  
20 occasion was a situation where we had a  
21 document that needed to be authenticated,  
22 and I had asked Kelly Tricoli who was then  
23 my assistant to set up the company to come  
24 pick up the documents. The gentleman who  
25 is responsible for that, his name was

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1 Allen. At this time I don't recall his  
2 last name. And I asked Kelly to set it up  
3 so that he would come pick it up and then  
4 get it authenticated and bring it back. I  
5 think that I had told Kelly in advance to  
6 make sure that if she wasn't going to be in  
7 the office, and I believe that it was a day  
8 that she was intending not to be in the  
9 office, that she arrange it in such a  
10 manner that I didn't have to worry about  
11 it. And, instead, what she did is she set  
12 it up and got him approved through the  
13 security system in the lobby of the  
14 building, but she didn't notify anybody  
15 else about when he would be coming or that  
16 he was coming, and I would have rather she  
17 notified the other administrative  
18 assistant/office manager because he  
19 arrived, but I didn't get the phone call,  
20 or I was in a meeting and nobody knew that  
21 he was there, and somebody found him in the  
22 lobby and brought -- and then I had to be  
23 interrupted. I was in a meeting with Donna  
24 and Brian, and it was a little bit like an  
25

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1 administrative fumble, that if you're not  
2 going to be there, make arrangements for  
3 somebody else to take care of this so that  
4 the general counsel or acting general  
5 counsel, who is busy, doesn't have to worry  
6 about whether or not the guy has picked up  
7 the documents or dropped off the documents.  
8 We have other administrative assistants in  
9 the office that could have been notified.  
10 And, so, I was simply telling Kelly in here  
11 that the guy showed up, that I was in a  
12 meeting, Brian found him in the lobby, he  
13 then came in and interrupted -- Brian then  
14 interrupted my meeting with Donna to tell  
15 me this guy was waiting in the lobby, and,  
16 so, Yuka, who is Donna's administrative  
17 assistant, I walked out of the meeting and  
18 asked her if she could help manage this  
19 situation, and all I said in this e-mail  
20 was, if you're not going to be in the  
21 office and something like this comes up,  
22 that you could just speak to Yuka who is  
23 just down the hall from you and arrange  
24 that she manage it instead of having to  
25

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2 interrupt a meeting or leave this guy in  
3 the lobby without knowing who to call, that  
4 kind of thing, and the response I got from  
5 her I thought was a little flippant for an  
6 assistant, and this was kind of the way  
7 that she spoke to me all the time. Her  
8 response was, well, he was registered for  
9 both days already, and I'm sorry an office  
10 full of people can't handle a visitor in my  
11 absence, and that just seemed to me like to  
12 push it off on me that I had somehow asked  
13 her to do too much by asking her to just  
14 make an arrangement that somebody help  
15 answer the door. Like it's not that big a  
16 deal, but it's not my job to make sure that  
17 someone else answers the door.

18 Q. Did you find Kelly a difficult  
19 person?

20 A. Yes.

21 Q. Would you say you had a  
22 difficult relationship with her?

23 A. Yes.

24 Q. Were there any other people in  
25 the office that you would say you had a

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2 difficult relationship with?

3 A. No.

4 Q. 834?

5 A. Yes.

6 Q. Can you tell me what this is  
7 about?

8 A. This is also off a notepad from  
9 an interview I had with someone at  
10 Oerlikon.

11 Q. Another job interview?

12 A. Yes.

13 Q. And what happened with that?

14 A. I didn't get the job.

15 Q. Did you have an interview?

16 A. On the phone.

17 Q. Did you -- we looked at a few  
18 examples of companies that you had notes  
19 about that you interviewed with or pursued  
20 applications for. Did you have other notes  
21 relating to other applications that you  
22 submitted?

23 A. I think now I have provided you  
24 with all of the notes that I have in  
25 writing, legal pads or note pads, and,

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2 primarily, I kept the notes electronically.

3 Q. Okay.

4 A. Some notes would have been when  
5 I didn't have my computer nearby.

6 Q. Got it.

7 Turning now to Exhibit 32 --

8 A. Sure.

9 Q. -- documents -- pages 836  
10 through 838.

11 A. Uh-hum.

12 Q. One page --

13 A. Yeah.

14 Q. -- it says 2018.

15 A. Yeah.

16 Q. The other one, the other two  
17 pages look kind of different.

18 A. Yeah.

19 Q. Are these two different  
20 documents, or three different documents or  
21 one document --

22 A. There's three different  
23 documents.

24 Q. Okay. When was page 836  
25 created?

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2 A. I believe sometime just after  
3 the close of 2018.

4 Q. Who created it?

5 A. I did.

6 Q. Was this submitted as an  
7 attachment to your tax returns?

8 A. It was used as a -- yes. I  
9 believe it was submitted possibly, but it  
10 was used as a basis for a schedule on a tax  
11 return.

12 Q. And 837, when was this created?

13 A. This was created probably after  
14 the close of 2019, documenting my expenses  
15 for 2019 in preparation of doing our taxes.

16 Q. And this was used as a basis  
17 also for preparing a schedule for 2019?

18 A. Yes.

19 Q. How come it includes at the  
20 bottom two entries for 2020?

21 A. I think it's a mistake. Oh,  
22 I'm sorry. Okay. Thank you for pointing  
23 that out. These two documents, the last  
24 two, they are 837 and 838, were created  
25 this year in response to inquiry from New

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2 York State Department of Taxation. And  
3 it's inadvertent that those two, 7/3/2020  
4 and 7/27/2020, that those two charges were  
5 included I think because Digital Tone gave  
6 us an invoice that -- gave us a line  
7 listing of all the invoices clumped  
8 together and somebody mistakenly entered it  
9 on here.

10 Q. When did you receive the  
11 inquiry from -- I think you said the New  
12 York State Tax Authority? Is that what you  
13 said?

14 A. Yeah. New York State in -- I'd  
15 have to ask my husband. I really don't  
16 know because I wasn't dealing with this.

17 Q. And what did the inquiry  
18 request of you?

19 A. They requested us to provide  
20 the -- we had all of the Amex receipts.  
21 They wanted the actual receipts.

22 Q. And you provided them?

23 A. I provided what we had.

24 Q. Was 838 prepared in response to  
25 the same inquiry?

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2 A. No. This was prepared earlier  
3 this year in preparation of doing our  
4 taxes, so, prior to April.

5 MR. FORTINSKY: I see. Okay.  
6 I want to just take a brief break  
7 before we finish.

8 THE VIDEOGRAPHER: The time is  
9 1:46 P.M. We're off the record.

10 (Whereupon, an off-the-record  
11 discussion was held.)

12 THE VIDEOGRAPHER: The time is  
13 2:04 P.M. and we're back on the  
14 record.

15 Q. Ms. Fischman, a follow-up  
16 question on a point we were discussing  
17 before the break.

18 Remember we talked about the  
19 lay-offs or the RIFS at MKIC and you were  
20 concerned about how Amber Todd was treated?

21 A. Yes.

22 Q. Did you do anything else in  
23 response to how she was treated besides  
24 what you've already told us about?

25 A. I communicated to the general

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counsel of the company that I thought what he was doing was wrong. I was, as I mentioned, afraid of retaliation, and that fear was confirmed some weeks later when I received for the first time ever a needs improvement for the first time in my legal career, actually, in my performance review generally called, needs improvement in communication. As I mentioned, there was no one else to report this to other than to general counsel, and he was the one who wanted me to spin it. So, no, I didn't do anything further.

Q. Did you ever discuss it with Pat Saunders in H.R.?

A. No, because Pat Saunders was not the H.R. director for that business. Pat Saunders only did H.R. for MCHA.

Q. Who was the H.R. director for that business?

A. Yvonne Bienemy.

Q. And did you go back to her after your discussion with Mr. Oliva?

A. Absolutely not. I wasn't going

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to undermine Nick's authority, and they'd spoken. I had no voice in this any further.

Q. How about raising the issue with Donna Costa?

A. As I mentioned, Donna Costa and Nick Oliva had schemed up this spinning of the story together. It would have been ineffective to raise it to Donna Costa since it was probably her idea.

Q. What's your basis for saying that?

A. Nick walked into my office and said, Donna and I have discussed this with Takayamasan and this is what we've come up with.

Q. What was your basis for thinking that you might be retaliated against?

A. The way that Nick responded to me when I told him that I was not in the business of spinning stories.

Q. And, specifically, what about his response led you to believe that there

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2 might be some retaliation, if anything?

3 A. He appeared angry with me, and  
4 kind of shut down and left the office.

5 Q. Did he say anything to suggest  
6 he would retaliate?

7 A. As I said, he immediately ended  
8 the conversation and told me not to deal  
9 with it and walked out of my office in a  
10 way that was visibly angry, and it was  
11 really the first time I had ever seen him  
12 visibly angry, and, frankly, it was the  
13 last time I ever saw him visibly angry.

14 Q. So, it was essentially that you  
15 saw that he was unhappy with something you  
16 had said that led you to believe that he  
17 might retaliate? It wasn't anything he  
18 said, it was just his, you know, what you  
19 perceived to be his unhappiness; is that  
20 fair?

21 A. He was visibly angry, and I had  
22 had not encountered that before. I was  
23 telling him that something he was doing or  
24 was suggesting for me to do was unethical  
25 and probably against the law. He was angry

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2 that I was calling him out on it, and he  
3 stormed out of the room. Did I think he  
4 was going to retaliate? Yes, I did based  
5 on his reaction to me, which, as you know,  
6 his demeanor is very even. This was a  
7 departure from that even temperament, so, I  
8 believed that he would retaliate, yes.

9 Q. Sitting here today, do you  
10 believe he did anything that was against  
11 the law?

12 A. He treated or he allowed the  
13 company to treat this employee who was a  
14 woman differently than other male employees  
15 of the company, and, so, I do believe that  
16 that was discrimination and against the  
17 law.

18 Q. So, you said it was differently  
19 from how other male employees were treated,  
20 but it was also differently from how other  
21 female employees were treated who received  
22 the same severance package; correct?

23 MR. BERMAN: Object to form.

24 A. So, I have no basis for what  
25 other employees received at the time that

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Amber was leaving. So, there were different periods of time where people received different things. So, when we did the formal RIF for -- the formal R-I-F, reduction in force, back in September, October time frame at Virginia and for MKIC, there may have been a cross section of employees both based on gender and age, but people left after that point of time, and my belief is that they all received severance right up until Amber, and I don't think any women left. I think it was all men. So, my basis for my belief was that she was being treated differently than the other male counterparties that had left the company and received severance.

Q. When was the last male employee that left prior to the discussion about Amber Todd?

A. I have no recollection at this time.

Q. Do you recall any other male employee being given a severance package in 2016?

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2 A. Well, this is early 2016, so, I  
3 -- at the time that I wrote this I probably  
4 did know that answer, but I don't have that  
5 answer for you today. I don't know how  
6 many, but I'd be happy to learn that there  
7 were others if you can produce that.

8 Q. As you sit here today, are you  
9 aware of any over employee that got a  
10 severance package after Dan Todd in October  
11 of 2015?

12 A. I can't recall the name of  
13 people, but I believe there were others.

14 Q. And when were they?

15 A. Sometime after September 2015.

16 Q. Do you remember any in the  
17 fourth quarter?

18 A. I can't recall at this time.

19 Q. Did you ever have a full list  
20 of the employees who received severance  
21 packages while you were working at the  
22 company?

23 A. I may not have, no.

24 Q. So, there might have been  
25 employees that had received severance

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2 packages that you were not aware of;  
3 correct?

4 A. To my knowledge, they were  
5 treating Amber differently because she was  
6 a woman.

7 Q. But there might have been  
8 employees that you were not aware of that  
9 were receiving severance packages; correct?

10 A. I really couldn't say at this  
11 time. If you have that information, I'm  
12 happy to go through that with you.

13 Q. If Nick knew -- if Mr. Oliva  
14 knew that there were women that had  
15 received severance packages subsequent to  
16 October 2016, then there would be no reason  
17 for him to perceive that it was  
18 discriminatory; correct?

19 MR. BERMAN: Object to form.

20 A. If Nick Oliva had in his  
21 possession the information that she was not  
22 being discriminated against, then I would  
23 have appreciated if you've raised that with  
24 me at the time that I raised my objection  
25 to the way he was spinning it at that time.

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2 I don't believe he had that information  
3 because that information did not exist.

4 Q. And if he had that information  
5 and he heard you accuse him of doing  
6 something illegal, it would be pretty  
7 natural for him to be angry; wouldn't it?

8 MR. BERMAN: Object to form.

9 A. No. I think a rational person  
10 would say, Jennifer, there's no  
11 discrimination here. We haven't provided  
12 severance to any number of employees. That  
13 would have been the rational response. I  
14 didn't sit there and go, I'm accusing you  
15 of -- you know, it wasn't that kind of  
16 conversation. I just said, look, I'm not  
17 in the business of spinning narratives.  
18 That's not my job. I'm in the business of  
19 preventing liability for the company, and  
20 making sure that they treat all of their  
21 employees with the same respect and dignity  
22 that they should be treated and that's my  
23 job. So, I didn't say -- I didn't start  
24 yelling at Nick saying, you know, your -- I  
25 said, they're discriminating against her

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2 and I'm not going to be a part of it.

3 Q. Do you think it's natural for  
4 people to be angry when they are accused of  
5 something they didn't do?

6 MR. BERMAN: Object to form.

7 A. I can't say how -- I'm not a  
8 psychologist and I can't say how people  
9 react. Different people react differently  
10 to all kinds of circumstances, as you well  
11 know.

12 Q. Sure.

13 But you've been around in the  
14 business world for -- well, forget the  
15 business world. You've lived in society  
16 for more than thirty years, I'll say.

17 A. Thank you. That's kind.

18 Q. You've noticed in that time, I  
19 suppose, that people tend to get angry when  
20 they're accused of things they haven't  
21 done; right?

22 MR. BERMAN: Object to form.

23 A. I can say that it is sometimes  
24 possible for a person who is accused of  
25 doing something that they had not done to

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2 feel defensive and say that they didn't do  
3 it.

4 Q. Do you think it's justifiable  
5 to be upset or angry if you're accused of  
6 something you didn't do?

7 MR. BERMAN: Object to form.

8 A. Jerry, you're the king of  
9 hypothetical questions.

10 Q. It's not a hypothetical. It's  
11 a generalization.

12 A. Generalization. I'm sorry. I  
13 think that people react differently to all  
14 kinds of situations. So, generally, some  
15 people may feel defensive and angry. Other  
16 people may absorb it and walk away. Other  
17 people may retaliate and get back against  
18 somebody by throwing something into their  
19 performance review that was fake. There  
20 are lots of reactions that people can have  
21 to accusations. Some people may sue when  
22 they're accused of wrongdoing that they  
23 didn't do. There's lots of reactions I  
24 think we can agree.

25 Q. Right.

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2 So, you sued when you were  
3 unhappy with --

4 A. When I was accused of doing  
5 something I did not do --

6 Q. Right.

7 A. -- and was wrongfully  
8 terminated on the basis of gender for this  
9 pretextual nonsense that they accused me  
10 of, yes.

11 Q. Right.

12 And Mr. Oliva didn't sue you  
13 for accusing him of anything he didn't do;  
14 did he?

15 MR. BERMAN: Object to form.

16 A. I think you're  
17 mischaracterizing my -- I'm sorry. I cut  
18 you off.

19 MR. BERMAN: I just wanted to  
20 get my objection on the record. You  
21 can answer.

22 A. I think you're  
23 mischaracterizing our conversation. I told  
24 him what the company was doing was  
25 discriminatory, and that I didn't want to

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2 be a part of it, and I wasn't going to spin  
3 it the way that he wanted it to be spun,  
4 so, I think it was bad legal advice. So,  
5 let me re-clarify that I wasn't accusing  
6 him of breaking the law. I was accusing  
7 him of enabling them to break the law, but  
8 even during my conversation with him it  
9 wasn't an accusation. It was a, I'm not  
10 going to be a part of that. I'm not going  
11 to do it. So, but he got visibly angry  
12 with me and walked out.

13 MR. FORTINSKY: Thank you. I

14 have nothing further. Oh, wait.

15 Hold on. I'm not closing the record  
16 yet. I do have another question.

17 MR. FORTINSKY:

18 Q. In the course of your work, you  
19 were aware of other people that were  
20 terminated from the company; right?

21 A. Yes.

22 Q. Were you aware of anyone that  
23 was terminated for complaining about some  
24 issue?

25 A. I don't know if --

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2 Q. Let me withdraw the question  
3 and clarify it.

4 I'm referring to any affiliate  
5 of MCHA, any Mitsubishi affiliate, are you  
6 aware of anybody that was terminated  
7 because the person complained about  
8 anything at the company?

9 A. You really have to be more  
10 specific. I handled many terminations over  
11 the course of my tenure there where I  
12 provided severance packages and wrote  
13 severance agreements for people, and it is  
14 possible that people were terminated for  
15 making complaints or -- let me clarify.  
16 Frequently, by the time the issue was  
17 raised to the legal department, the H.R.  
18 manager at a specific company might say, we  
19 would like to terminate such-and-such  
20 employee, and the question would be, on  
21 what basis? Well, they -- the answer might  
22 include a combination of, we have a number  
23 of bases for the termination, but they have  
24 also complained about harassment, and, so,  
25 we are worried, we don't want to come

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2 across as retaliation, so, as retaliating  
3 against this employee, which, of course, is  
4 not the basis for our termination, but that  
5 does raise a concern. H.R. professionals  
6 know that if someone raises concerns that  
7 that could be viewed as retaliation, right,  
8 so, they'll -- they frequently would give  
9 me, you know, as much information as they  
10 could, and then I would help them -- the  
11 legal department would help them either  
12 terminate or not terminate as the case may  
13 be depending on the level of risk to the  
14 company.

15 Q. As you sit here today, can you  
16 think of any instance in which any  
17 affiliate of MCHA terminated an employee  
18 and one of the circumstances that you  
19 recall is that the employee had complained  
20 about something?

21 A. If you could provide me with a  
22 list of all of the terminations that I  
23 handled over my nine years of providing  
24 legal advice and employment advice to the  
25 more than two dozen companies that I've

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2 recorded, I would be happy to go through  
3 each one of them and tell you whether or  
4 not I believe that they had complained  
5 about a wrongdoing at the company and was  
6 terminated anyway.

7 Q. I appreciate the offer, but my  
8 question really is just about what you  
9 recall, what is in your head at the moment.

10 Do you, as you sit here now,  
11 have any recollection of anybody being  
12 terminated and in connection with that file  
13 you saw some reference that the person had  
14 complained about something at the company,  
15 and, if so, tell us who that was?

16 A. As I've stated, I worked with  
17 more than a dozen or two dozen companies  
18 over the nine years that I worked at  
19 Mitsubishi Chemical Holdings America. I  
20 wrote dozens and dozens of termination  
21 agreements and severance agreements. I  
22 definitely, definitely, as I sit here  
23 today, can recall that some of them  
24 included concerns raised by an employee,  
25 and, yes, they were still terminated. I

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cannot at this time recall the name of those people, but I would be happy to if you can send me the names of the people and the companies that they worked with and the e-mails that I exchanged with the H.R. professionals at the time, I'd be happy to work through those and find you some. Again, you guys are in possession of all of my documents, all of my notes, all of my records, and we received very little of that, so, it's a little hard for me to recall a name off the top of my head.

Q. Okay. Do you recall any instance in which someone complained about discrimination or sexual harassment --

A. Yes.

Q. -- and then was subsequently terminated?

A. Yes. Actually, this just occurred to me that we had three employees involved in complaints about sexual harassment at the pharma company in New Jersey, which would have been MPDA, MP -- Mitsubishi -- MTPA, Mitsubishi Tanabe

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2 Pharma America, Mitsubishi Tanabe Pharma  
3 Development Inc. There was two or three  
4 companies -- I can't recall at the time  
5 right now -- that Andy Sazar managed and  
6 provided legal services to where there were  
7 complaints of sexual harassment, and the  
8 complainants were terminated, and I believe  
9 now I'm going to have to stop because there  
10 was attorney-client -- I'm surprised nobody  
11 here is objecting because this is all  
12 attorney-client privileged, and I'm going  
13 to stop there, but, yes, the answer is yes.

14 MR. FORTINSKY: Okay. Let me  
15 just consult with MCHA counsel based  
16 on that. Hold on one second. Off  
17 the record a second.

18 THE VIDEOGRAPHER: The time is  
19 2:26 P.M. and we are off the record.

20 (Whereupon, an off-the-record  
21 discussion was held.)

22 THE VIDEOGRAPHER: The time is  
23 2:27 P.M. and we are back on the  
24 record.

25 MR. FORTINSKY: Could I ask the

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2 Court Reporter to read back the last  
3 three questions and answers, please?

4 THE REPORTER: Sure.

5 (Whereupon, the referred to  
6 testimony was read back by the  
7 Reporter.)

8 Q. In the examples you mentioned,  
9 were the accusations of sexual harassment  
10 made before or after the termination of the  
11 employees?

12 A. My recollection is that they  
13 were made prior to the termination.

14 Q. And what happened in those  
15 cases subsequently?

16 A. Those cases were settled.  
17 They were litigations that were settled.  
18 Oh, it just occurred to me that this firm  
19 may have been involved in those cases.

20 Q. Which affiliates were involved  
21 in those cases?

22 MR. BERMAN: Object to form.

23 A. I said that those were the  
24 pharma companies in New Jersey.

25 Q. Oh, the pharma -- sorry.

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2 A. Yeah.

3 Q. Are you aware of any instance  
4 in which an employee of MCHA made an  
5 accusation of sexual harassment or  
6 discrimination of any kind and then was  
7 subsequently terminated?

8 MR. BERMAN: Object to form.

9 A. Of MCHA?

10 Q. Right.

11 A. MCHA was a very small company  
12 with, I don't know, maybe twenty-five  
13 employees total, and was even smaller than  
14 that in the New York office at least, and I  
15 can think of one occasion, again, where  
16 Gordon Rees represented Mitsubishi where  
17 there was a complaint of -- where there  
18 were complaints, but not until after the  
19 termination.

20 Q. So, again, as to MCHA, are you  
21 aware of any MCHA employee that made an  
22 accusation of discrimination or harassment  
23 and then was subsequently terminated?

24 A. I think as Donna -- as Donna  
25 testified, I can only think of two

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terminations in the history of MCHA, mine and another employee who also threatened the company who the company settled with.

Q. So, the answer I take it is, no, you're not aware of any such example?

A. No, but I'm not privy to everything that occurred that may have occurred for other people and their severance from the company. I may not have been privy to their complaints, and it's possible that they made complaints and then the company severed the relationship.

Q. So, as you sit here today, you're not aware of any instance in which an MCHA employee complained of harassment or discrimination and then was subsequently terminated; correct?

MR. BERMAN: Object to form.

A. It's a two-part question. The first part is, I am aware of people complaining about harassment and/or discrimination at the company, so, yes. The answer to the first part of the question is yes. The answer to the second

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2 part of the question is no.

3 Q. So, again, there was no  
4 instance -- are you aware of any instance  
5 in which someone was terminated --

6 A. Yes. Myself.

7 Q. -- after complaining of sexual  
8 harassment or discrimination?

9 A. Yes. Once again, I'm sorry I  
10 cut you off, Jerry. The answer is, other  
11 than myself, the answer is no. The other  
12 answer is, yes, me.

13 Q. And when you say that, what  
14 instance of complaining of discrimination  
15 or harassment do you have in mind?

16 MR. BERMAN: Object to form.  
17 You can answer.

18 A. The incidents of discrimination  
19 as outlined in my complaint.

20 Q. Now, let's talk about MCHC.  
21 Are you aware of any instance in which any  
22 MCHC employee was terminated after  
23 complaining of harassment or discrimination  
24 of any kind?

25 A. I would not be privy to MCHA.

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2 MCHC, I wouldn't have been privy to that.

3 Q. And, therefore, the answer is  
4 no?

5 A. The answer is I am not privy to  
6 the internal workings of MCHC in Japan.  
7 While they were very much engaged in what  
8 was going on in the U.S., it was not a  
9 reciprocal conversation.

10 Q. My question isn't about what  
11 you were or not privy to. My question is  
12 about what you are or are not aware of. My  
13 question is whether you are aware of any  
14 instance in which an MCHC employee was  
15 terminated after discriminating or after  
16 making allegations of discrimination or  
17 harassment.

18 A. I am not aware of any for MCHC  
19 if that was handled in Japan, and I would  
20 not have been notified of it. It's not  
21 going to be publicized in any American  
22 affiliate.

23 Q. And, therefore, you're not  
24 aware of any such incidents?

25 A. That's right.

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2 Q. I just want to clarify one  
3 thing.

4 A. Okay.

5 Q. In your testimony a moment ago  
6 you said when I asked you about instances  
7 where MCHA employees have been terminated  
8 after complaining about discrimination or  
9 harassment, you made reference to your own  
10 complaint in this case. Where in the  
11 complaint did you recite an instance where  
12 you had complained about discrimination of  
13 some kind?

14 MR. BERMAN: Object to form.

15 A. You can present the -- if you  
16 want to give me the complaint and I'll go  
17 through it.

18 Q. Okay.

19 THE WITNESS: We can object  
20 because we've been here for  
21 two-and-a-half hours. I'm exhausted.

22 MR. BERMAN: Jerry, you've  
23 already walked through the entire  
24 complaint allegation by allegation.

25 MR. FORTINSKY: But I don't

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2 think she said at the time -- I think  
3 those questions before were about  
4 discrimination rather than complaints  
5 about discrimination.

6 MR. BERMAN: The pleading  
7 identifies multiple instances of  
8 alleged oppositional and complaining  
9 activity. You've already walked  
10 through it on, I think, day 1.

11 Q. So, let me just try to short  
12 circuit that by asking you this, apart from  
13 what's in the complaint, do you, as you sit  
14 here now, have any recollection of any  
15 complaint that you made, that is, any  
16 instance of complaining by you of  
17 discrimination or harassment?

18 A. The instances are outlined in  
19 the complaint.

20 Q. And other than that, there is  
21 nothing that you have in mind in your  
22 answers to these questions?

23 A. No.

24 MR. FORTINSKY: Okay. Nothing  
25 further. Thank you very much.

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2 MR. BERMAN: Are you tendering  
3 the witness back to us?

4 MR. FORTINSKY: Well, I guess  
5 in principle MCHA could -- okay.  
6 Yes.

7 MR. BERMAN: They've tendered  
8 the witness back to us. This is  
9 Matthew Berman for Plaintiff. We'd  
10 like to ask a few questions of this  
11 witness.

12 EXAMINATION BY

13 MR. BERMAN:

14 Q. Ms. Fischman, I'll try to be  
15 brief.

16 During the course of your  
17 employment with MCHA, did you have a  
18 company issued mobile phone?

19 A. I did.

20 Q. During your tenure at MCHA, did  
21 you use that mobile phone to conduct  
22 business?

23 A. And my answer is yes, I did,  
24 exclusively.

25 Q. Did the business that you

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2 conducted using that mobile phone include  
3 text communications?

4 A. Yes, it did.

5 Q. Did those text communications  
6 include communications between you and Ms.  
7 Costa?

8 A. Yes.

9 Q. Did they include communications  
10 between you and Mr. Oliva?

11 A. Yes.

12 Q. Did that mobile phone have  
13 access to e-mail?

14 A. Yes.

15 Q. Did it have access to your work  
16 e-mail at MCHA?

17 A. Yes.

18 Q. Did your cell phone contain  
19 e-mail communications between yourself and  
20 Ms. Costa?

21 A. Yes.

22 Q. Did it contain communications  
23 between you and Mr. Oliva?

24 A. Yes.

25 Q. On your last day of work, did

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2 you still have that mobile phone in your  
3 possession?

4 A. I did.

5 Q. And in the course of your last  
6 day of work, did you tender possession of  
7 that phone back to an employee of MCHA?

8 A. Yes. I provided it to Pat  
9 Saunders when she escorted me out of the  
10 office.

11 Q. You testified earlier today  
12 concerning legal pads that you maintained  
13 at MCHA. Do you recall that testimony?

14 A. Yes.

15 Q. On your last day of employment  
16 with MCHA, were those legal pads still in  
17 your possession?

18 A. Yes.

19 Q. And on the last day of your  
20 employment, did you take those legal pads  
21 with you from the office?

22 A. I did not. I left probably two  
23 dozen legal pads that I had written notes  
24 on either in the bottom file drawer of my  
25 credenza or in the bookcase opposite my

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credenza.

Q. Okay. Thank you.

Do you recall earlier on being asked about meetings with Japanese executives and the cultural formalities concerning those meetings?

A. Yes.

Q. During your meetings with clients from Asia during your tenure at MCHA, were there any cultural issues that you were particularly mindful of during your meetings?

A. Absolutely.

Q. Can you please describe them?

A. It was always very important when we met with -- well, truthfully, I have the same respect for all of my clients whether they are Japanese nationals, ex-pats or Americans, and I would treat them equally with respect and dignity if I was interacting with them. Having said that, I was also quite mindful of the Japanese business etiquette because when I first started at Mitsubishi back in 2008, I

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was unfamiliar with Japanese business etiquette, and I received a book -- I either bought it on Amazon or I had a book. I don't remember where I got it from -- on business etiquette in Japan, and I read that book thoroughly because I wanted to fit in with the culture of this new company. So, I knew that there were a few things that were very important to Japanese businessmen when they came to America, and, also, when I visited in Japan and when I interacted with them. One of them was the presentation of the business card. The presentation of the business card is not like in the U.S. where we just hand over a business card and say, here's my card. The presentation of a business card is a two-handed clutching of the business card and presented, and I'm doing this because we're on video so you can see -- everybody can see it -- is a two-handed presentation and a two-handed reception from the person, and it isn't just a thank you for your business card. It is a you want to look at

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the card very carefully, restate the person's name, maybe admire the position that they're in to show them that you respect that they are in the position they're in. It's funny that I still kind of use that practice today when I present my business cards to anybody, but I have a lot Asian clients in Scarsdale in real estate, and I take that opportunity to present my business card in such manner to show them respect of culture -- sorry. Do you have another question? I'm sorry.

Q. Did you complete your response, Ms. Fischman?

A. No, not yet.

Q. Okay. Please continue.

A. I'm sorry. I was going to just say the other thing that's important, especially in Japan, but sometimes also in the U.S., is the placement of people around a table, and we did talk about this a little bit in the first day of my deposition. There is a power seat. Sometimes it's the head of the table.

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2 Sometimes it's the center of the table.  
3 When Japanese guests arrive or any guests,  
4 for that matter, you ask them to decide  
5 where to sit. You frequently don't sit  
6 down until they sit down. Having practiced  
7 this over the course of many years, there  
8 are certain clients that I had that we had  
9 kind of gone through that dance before  
10 where, no, you sit down, no, no, no, you  
11 sit down, no, no, no, you take the big --  
12 the important seat. No, I'll take the  
13 important seat. If I were more familiar  
14 with a client from Japan or visiting from  
15 another business, I often would just sit  
16 down and frequently they would say,  
17 Jennifer, you sit down here. So, I often  
18 took their lead and there were other  
19 business cultural things. One involved  
20 drinking beer after the business meeting.  
21 We don't need to get into the details of  
22 that.

23 Q. Okay. Thank you, Ms. Fischman.

24 Now, you described some of your  
25 practices with respect to visiting Japanese

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2 business men; correct?

3 A. Yes.

4 Q. Were you ever visited by any  
5 Japanese business women?

6 A. In 2016 or late '15, and it may  
7 have actually been in 2017, there was a  
8 newly appointed outside director to the  
9 MCHC Board. She was the first business  
10 executive that I had ever met that was a  
11 woman from Japan. There was another woman  
12 that I once met maybe back in 2011 who was  
13 in sales and marketing for one of the MCC  
14 companies, but she was not a director  
15 level, and then of course we had our  
16 Japanese trainees who came to the office  
17 who were, of course, low-level trainees,  
18 so, we had two, Miko and Kanako during my  
19 tenure.

20 MR. BERMAN: Okay. I'm going  
21 to pass around an Exhibit now. I'll  
22 guess we'll deem this marked as 34.  
23 If you can just take one and pass it  
24 along. And I will identify for the  
25 record that the Exhibit deemed marked

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2 as Exhibit 34 is a three-page  
3 document bearing Bate-stamped TEF  
4 001714 through 1716. I believe this  
5 corresponds to an Exhibit that's been  
6 previously presented in this  
7 deposition, but because we don't have  
8 the physical Exhibits here and we are  
9 dealing with a remote Court Reporter,  
10 I've had counsel for MCHA make copies  
11 for you.

12 (Whereupon, TEF 001714 through  
13 001716 was deemed marked as Exhibit  
14 34 for Identification as of this date  
15 by the Reporter.)

16 Q. Ms. Fischman, I'm going to show  
17 you, if you don't mind, please turn to the  
18 very final page of this document, which  
19 I'll represent to you is an excerpt of the  
20 2015 performance review dated November  
21 11th, 2015. I'd like to turn your  
22 attention to the first paragraph of this  
23 document referencing the Comtrex  
24 litigation. Do you see that paragraph?

25 A. Yes, I do.

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Q. Can you tell me whether this narrative concerning the Comtrex litigation accurately reflects your work on that project?

A. No, it does not.

Q. What is inaccurate about that representation of the contract litigation?

A. The paragraph starts out with, first in the contract litigation you blamed the head of an MCC division, the president of the U.S. company, and a junior MCHJ employee for your failure to communicate effectively. On -- this Comtrex litigation occurred throughout the late 2014, early 2015 time frame, and, in fact, I never blamed anyone about anything, and I was responsible in supporting a U.S. company called Mitsubishi Chemical Performance Polymers, and this U.S. company had purchased another U.S. company called Comtrex. Comtrex had hidden hazardous waste on the site during the walk-throughs of the business prior to purchase, and during the course of post-acquisition there

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2 had been a flood due to torrential rain in  
3 the Detroit area where it was located, and  
4 those hazardous waste barrels were  
5 inundated. During that time it was  
6 discovered that they were hazardous waste.  
7 The president of the company asked me for  
8 advice on how to deal with Comtrex who they  
9 believed had committed fraud by hiding --

10 MS. COLWIN: I just want to  
11 note my objection. This is  
12 privileged information. If we are  
13 going to talk any privileged  
14 information, we don't have the  
15 ability to waive.

16 MS. FISCHMAN: Okay.

17 MS. COLWIN: I'm objecting on  
18 the grounds of privilege.

19 A. So, let me try and sum up  
20 instead of getting into the details. Let  
21 me just try and sum up that throughout 2014  
22 I had worked on the acquisition. I had  
23 supported this business for many years. I  
24 had communicated all the time with the U.S.  
25 president of this business about this

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litigation. I was in near constant communication with him about the strategy and work with outside counsel. So, this statement completely and inaccurately alleges that I blamed somebody else at a different company for my failure to communicate effectively. There was no failure to communicate effectively, and I was in constant communication with the U.S. president and the head of that MCC division in Japan, and, actually, the MCHJ junior employee that they're referring to here is Kanako Murata, who I already established I had a very, very strong relationship with.

Q. And in connection with that project, did you notify your superior at MCHA concerning the status of the litigation?

A. Absolutely. Donna was away on a vacation for two weeks during the course of which some questions were raised by the MCC division manager, which was Takimoto, who we have requested to participate and sit for a deposition, but you refused to

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2 produce, and I communicated effectively  
3 with him and asked him if there was any  
4 questions that I can answer for him and  
5 provided him with as much information as I  
6 possibly could.

7 Q. Ms. Fischmman, in turning next  
8 to the Philtec matter referenced in this  
9 document, does this paragraph, the second  
10 paragraph there which begins, second, in  
11 the Philtec matter, does that paragraph  
12 accurately reflect your work on the Philtec  
13 matter?

14 A. No, it does not.

15 Q. What is inaccurate about the  
16 paragraph here?

17 A. In the Philtec matter, which  
18 came to light at the end of August of 2015,  
19 this was an allegation of bribery at the  
20 border by Philtec, an affiliate of MKIC,  
21 and it was raised to Donna's attention and  
22 she asked me to investigate. As part of  
23 that investigation, we hired Arnold &  
24 Porter of Washington D.C., highly rated,  
25 one of the best law firms in the country

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2 outside of, of course, Gordon Rees and  
3 Shearman & Sterling who are seated here  
4 today, and we asked them with  
5 Spanish-speaking attorneys to conduct an  
6 investigation. I provided some preliminary  
7 information and data to Donna in September  
8 of what we believed would be the conclusion  
9 after the initial stages of the  
10 investigation. I made no conclusions of  
11 law or fact at that time, but merely tried  
12 to report the status of the investigation.  
13 The investigation continued for another two  
14 months, and a report was provided by Arnold  
15 & Porter at the end of that investigation  
16 in December of 2015, which made all the  
17 conclusions of fact and all the conclusions  
18 of law.

19 Q. Thank you.

20 Turning to the next paragraph  
21 where it says, third, you exhibited poor  
22 judgment with respect to the 4010 filing?  
23 Do you see that paragraph?

24 A. Yes.

25 Q. Does that paragraph accurately

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2 reflect your work on the 4010 filing?

3 A. No, it absolutely doesn't  
4 reflect it at all.

5 Q. What is inaccurate about that  
6 paragraph?

7 A. So, with respect to the 4010  
8 filing, I had been asked to participate in  
9 a phone call where it was learned that the  
10 actuaries who conduct an extensive study of  
11 pension plans across all of our companies  
12 to make sure that they fulfill the  
13 requirements of the tax -- of the 4010 tax  
14 requirement, and determined that they had  
15 miscalculated two businesses who had been  
16 recently joined into the pension plan, and  
17 while on their own they both fulfilled all  
18 of the requirements under the 4010  
19 individually, in addition, when they were  
20 added into the company pension plan, they  
21 also fulfilled all the requirements of the  
22 pension, but they had separately filed  
23 them. We had numerous conversations with  
24 the actuaries. We had numerous  
25 conversations with Winston & Strawn who was

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outside counsel on the pension plan that Donna Costa had hired. I had not been involved in the pension prior to me taking over as acting general counsel, and this was the first engagement that I had on that matter, and Pat Saunders had asked me to listen in on a conversation. I listened in and we determined that we needed to get more information from Winston & Strawn and more advice on how to move forward on that matter, whether we needed to redo the filing, which would have cost an enormous amount of money because those filings -- the actuaries cost about \$100,000 for each of those, and nobody wanted to spend that. So, we were trying to find a way to make sure we didn't have to spend that, but notify the IRS that everything complied. Ultimately, we received advice from Winston & Strawn that we followed, and that's all I'll say about that to respect the privilege.

Q. Thank you, Ms. Fischman.

In connection with your

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2 providing any advice without revealing the  
3 nature or substance thereof, were you  
4 unwilling to seek advice from Donna Costa?

5 A. I was perfectly willing to seek  
6 advice from Donna Costa on all of these  
7 matters, but she traveled a great deal, and  
8 she also tried to avoid me. And Pat, who  
9 had been working with her for many years on  
10 the IRS filings and the pension plan, had  
11 been in conversation with Donna about this  
12 matter, so, it was unnecessary for me to  
13 have a separate conversation and waste her  
14 time. Pat had the conversation with her.  
15 I then sat through another telephone call  
16 and everything was resolved very easily and  
17 amicably with no cost to any of the  
18 companies.

19 Q. Turning to the fourth paragraph  
20 concerning your interactions with Kelly  
21 Tricoli, that's been discussed at length  
22 during the more than fourteen hours of  
23 testimony today, so, I'm not going to go  
24 into detail on that, but I would just ask  
25 you whether you have engaged in any

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2 consistently retaliatory behavior against  
3 Ms. Tricoli as a result of her complaint?

4 A. Absolutely not. I did  
5 everything but that. In fact, as has been  
6 discussed prior to today in my testimony, I  
7 sought the advice and counsel of a  
8 well-respected labor attorney, and he  
9 guided my action in every way in order to  
10 avoid any liability whatsoever.

11 Q. Okay. Let me direct your  
12 attention to the last sentence of that  
13 paragraph. It begins, you have refused to  
14 cooperate in a manner of your own making  
15 and have compromised the interest of the  
16 company as a result. Is that statement  
17 accurate?

18 A. No, it's not accurate at all.

19 Q. And what is inaccurate about  
20 that statement?

21 A. As we have seen through the  
22 documentation and the depositions that have  
23 taken place to date, after Kelly Tricoli  
24 made her formal complaint to Donna and Pat  
25 about a conversation that I had had with

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Pat, Donna asked Pat to conduct an investigation of her own conversation. I objected to the ridiculousness of that idea because it was, how could a person investigate their own conduct? That was an absolute conflict of interest. And if we were really going to treat this as a true complaint, rather than her just complaining because she wasn't Donna's assistant anymore and didn't want to be mine, then let's hire a third-party objective outside counsel to interview me on the fact of what actually took place. And we know from the e-mail that Donna was prohibited by Japan from hiring anybody to investigate it and the matter was subsequently dropped.

Q. And turning to the next paragraph after that that begins, finally, the most recent example of your conduct in the Project Genesis meeting during the go/no go discussion. Do you see in that paragraph where it mentions you giving a lengthy speech?

A. Yeah.

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2 Q. Did you give a lengthy speech  
3 in connection with the go/no go meeting for  
4 Project Genesis?

5 A. No, I didn't give a lengthy  
6 speech. This was a situation where we were  
7 seated around a conference table similar to  
8 this one here, and we had had about two  
9 days of discussions about the -- about the  
10 project. We had laid out the legal RIF  
11 early on in those discussions, maybe the  
12 first day of the discussions, and as we  
13 were going around the table and when they  
14 got to me as the acting general counsel and  
15 lead -- I would say lead lawyer on the  
16 deal, I actually stated I didn't think it  
17 was for me in my role as lawyer to give a  
18 go or no go decision because that's not the  
19 job of the lawyer. That's a business  
20 decision. So, I reiterated kind of listing  
21 what I thought was a main RIF for everybody  
22 to hear them one more time, and for  
23 everyone to acknowledge and for me to say  
24 to everybody else, listen, we know all of  
25 these RIFS exist. If you all are happy

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2 with the fact -- with your mitigation plans  
3 for these RIFS, then you should plan to  
4 move forward, that's a business decision,  
5 and that is all I said, but this was  
6 already when the demotion was already done  
7 and this was late October, early November.

8 Q. In connection with that  
9 meeting, do you see in the paragraph where  
10 it says, more importantly, you either  
11 failed to notice the look of shock on  
12 Ciro's face, Ciro, C-I-R-O, or you chose to  
13 ignore it, as you kept on pushing your  
14 point. Do you know who Ciro is in  
15 reference to?

16 A. Yes. I believe that's Ciro  
17 Amaguta, the president of Polycap, Inc.

18 Q. Okay. And was he in attendance  
19 during that meeting?

20 A. He was.

21 Q. And in connection with your  
22 contributions to the meeting, did you  
23 observe his response to your presentation?

24 A. Yes, I did. And I did not  
25 notice any shock or disbelief. I was doing

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my job. I was the lawyer in the room, and I was brought in specifically to identify the RIF for the business people and make sure there were mitigation plans that they had adopted.

Q. Was this person you just mentioned, Ciro, also involved in the negotiations you had with Kaylin?

A. He was.

Q. And in connection with those negotiations, did you work with Norton Rose?

A. Yes.

Q. And have you seen any of those communications in connection with the filing of this lawsuit?

A. I have.

Q. And do you know whether we have received the entire set of communications concerning the Kaylin negotiation?

A. We have not.

MR. BERMAN: Okay. I'm going to reserve the right to recall the witness based upon any subsequent

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productions for disclosures that are made. Subject to that, we have no further questions at this time.

MS. COLWIN: I just have a couple of quick questions for you.

EXAMINATION BY

MS. COLWIN:

Q. Is it your testimony that you texted messages on your MCHA device that is pertinent to your case?

A. It very well may be, yes.

Q. Can you recall as you sit here today any messages in particular that might be pertinent to your case?

A. I'm sure that I texted on numerous occasions on all of the matters that we have requested all communications during discovery.

Q. What is the nature of the messages that you believe existed on your MCHA device that's pertinent to your case?

A. I frequently communicated with Donna and Nick and other clients I text, and, so, there very well may be

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2 discoverable information for my case, and  
3 that is for you to review the text messages  
4 and send us the ones that are responsive to  
5 the document request that we've asked for.

6 Q. But do you think the messages  
7 pertain to cases that you worked on?

8 A. I think the text messages would  
9 pertain to lots of things that we've  
10 discussed during the course of this  
11 litigation.

12 Q. I'm trying to determine what is  
13 the nature. List it for us, what you  
14 believe the nature of the text messages.  
15 If it's pertaining to cases, that's one.  
16 Anything else?

17 A. I think that it would pertain  
18 to every matter that I worked on at  
19 Mitsubishi. It would pertain to  
20 communications with Donna. It would show a  
21 number of communications with Ms. Tricoli.  
22 It would show communications with lots of  
23 people that have been put into issue with  
24 this case. We've asked for all this  
25 information in our document request. I

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2 don't think it's necessary to like go back  
3 and rehash. If you want to pull out the  
4 document request, we can go through that.

5 Q. No. I'm fine. I'll work it  
6 out with your counsel.

7 I know that you mentioned legal  
8 pads. I'm just going to direct this to Mr.  
9 Berman.

10 MS. COLWIN: We have the legal  
11 pads here. Happy to do a D & I  
12 whenever you would like.

13 MR. BERMAN: I think we'll take  
14 you up on that.

15 MS. COLWIN: Sure. They're  
16 literally in Brittany's office.

17 MR. BERMAN: Okay.

18 MS. COLWIN: So, whenever you  
19 want to do --

20 MR. BERMAN: We'll discuss that  
21 off the record.

22 MS. COLWIN: Okay.

23 THE WITNESS: Reserve your  
24 right to question every witness --

25 MR. BERMAN: I'll reserve the

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right to factor that into additional questioning as appropriate. We're reserving our right to ask questions of witnesses who have already been deposed based upon the subsequent disclosures, if appropriate.

MS. COLWIN: We join in that, as well. If there is any other need to bring witnesses back for the same reason, we will. We'll ask them.

Thank you, Ms. Fischman. We're set.

THE VIDEOGRAPHER: We are going off the record at 3:12 P.M., and this concludes today's testimony given by Ms. Jennifer S. Fischman. The total number of units used was one, and will be retained by Veritext.

(Whereupon, at 3:12 P.M., the Examination of this witness was concluded.)

° ° ° °

D E C L A R A T I O N

I hereby certify that having been  
first duly sworn to testify to the truth, I  
gave the above testimony.

I FURTHER CERTIFY that the foregoing  
transcript is a true and correct transcript  
of the testimony given by me at the time  
and place specified hereinbefore.

-----  
JENNIFER STONE FISCHMAN

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

-----  
NOTARY PUBLIC

## E X H I B I T S

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## QUESTIONS MARKED FOR RULINGS

## PAGE LINE QUESTION

(None)

C E R T I F I C A T E

STATE OF NEW YORK )  
: SS.:  
COUNTY OF WESTCHESTER )

I, FRANCES FITZPATRICK, a Notary  
Public for and within the State of New  
York, do hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and  
that such examination is a true record of  
the testimony given by that witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or by marriage and that I  
am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 9th day of August, 2021.



-----  
FRANCES FITZPATRICK

**ERRATA SHEET**  
**VERITEXT/NEW YORK REPORTING, LLC**

**CASE NAME:** Fischman v. Mitsubishi Chemical Holdings America  
**DATE OF DEPOSITION:** July 26, 2021  
**WITNESS' NAME:** Jennifer Stone Fischman

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JENNIFER STONE FISCHMAN

Subscribed and Sworn To  
 Before Me This \_\_\_\_\_ Day  
 of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
 Notary Public  
 My Commission Expires \_\_\_\_\_

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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